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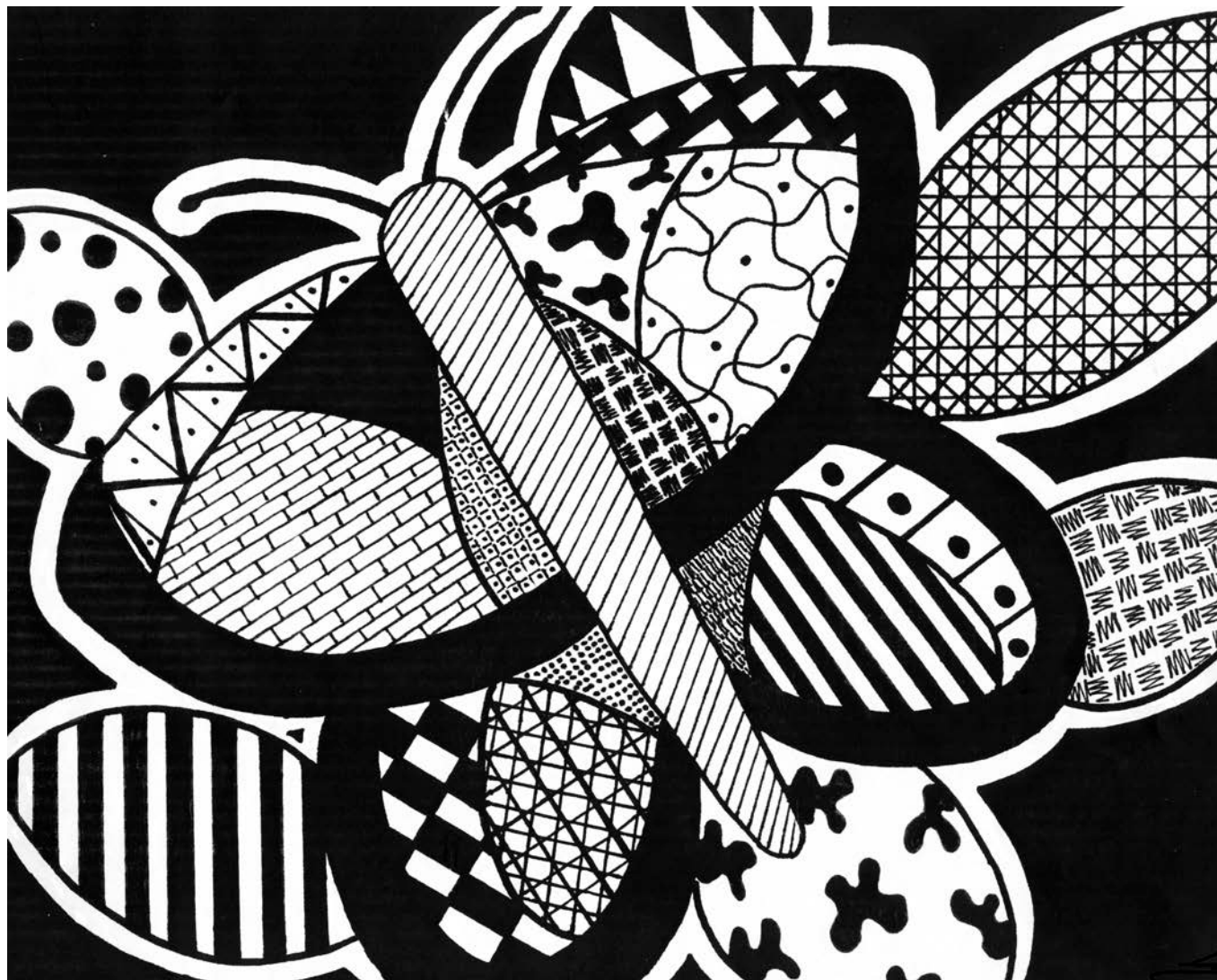
# TEXAS REGISTER

*Volume 38 Number 25*

*June 21, 2013*

*Pages 3857 -*

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

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

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# TEXAS REGISTER

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# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	3863
Appointments.....	3863
Proclamation 41-3325.....	3872

## **ATTORNEY GENERAL**

Requests for Opinions.....	3873
Opinions.....	3873

## **PROPOSED RULES**

### **TEXAS ETHICS COMMISSION**

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES	
1 TAC §20.1.....	3875
POLITICAL AND LEGISLATIVE ADVERTISING	
1 TAC §26.7.....	3876

### **TEXAS DEPARTMENT OF AGRICULTURE**

COTTON PEST CONTROL	
4 TAC §20.30, §20.31.....	3877

### **STATE BOARD OF DENTAL EXAMINERS**

DENTAL LICENSURE	
22 TAC §101.1, §101.5.....	3879
FEES	
22 TAC §102.1.....	3880
PROFESSIONAL CONDUCT	
22 TAC §108.73.....	3881

### **TEXAS MEDICAL BOARD**

GENERAL PROVISIONS	
22 TAC §161.3.....	3881

### **DEPARTMENT OF STATE HEALTH SERVICES**

PRIMARY HEALTH CARE SERVICES PROGRAM	
25 TAC §§39.1 - 39.4, 39.6 - 39.9, 39.11.....	3883

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

RADIOACTIVE SUBSTANCE RULES	
30 TAC §336.1310.....	3885

### **TEACHER RETIREMENT SYSTEM OF TEXAS**

MEMBERSHIP CREDIT	
34 TAC §25.1.....	3888

### **TEXAS DEPARTMENT OF PUBLIC SAFETY**

TEXAS DIVISION OF EMERGENCY MANAGEMENT	
--	--

37 TAC §7.3.....	3889
37 TAC §§7.11 - 7.13.....	3890
37 TAC §7.42, §7.43.....	3891

### **DRIVER LICENSE RULES**

37 TAC §15.142.....	3892
---------------------	------

### **EQUIPMENT AND VEHICLE SAFETY STANDARDS**

37 TAC §21.5, §21.9.....	3892
--------------------------	------

### **DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES**

37 TAC §28.1, §28.7.....	3893
37 TAC §28.24.....	3894
37 TAC §§28.61 - 28.67.....	3895
37 TAC §28.109.....	3896
37 TAC §28.128, §28.130.....	3896

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

#### **DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM**

40 TAC §42.103.....	3899
40 TAC §42.212.....	3903
40 TAC §42.223.....	3905
40 TAC §42.404.....	3908
40 TAC §42.641.....	3909

#### **CLIENT MANAGED PERSONAL ATTENDANT SERVICES**

40 TAC §§44.1 - 44.4.....	3910
40 TAC §44.11.....	3911
40 TAC §44.21.....	3911
40 TAC §§44.31 - 44.33.....	3911
40 TAC §§44.41 - 44.43.....	3912
40 TAC §44.51, §44.52.....	3912
40 TAC §§44.61 - 44.65.....	3912
40 TAC §44.71, §44.72.....	3913
40 TAC §§44.81 - 44.83.....	3913
40 TAC §44.91 - 44.94.....	3913
40 TAC §§44.101 - 44.107.....	3914
40 TAC §44.111, §44.112.....	3914

#### **CONSUMER MANAGED PERSONAL ATTENDANT SERVICES**

40 TAC §§44.101 - 44.103.....	3915
40 TAC §§44.201 - 44.206.....	3916
40 TAC §§44.301 - 44.309.....	3918

40 TAC §§44.401 - 44.404 .....	3921
40 TAC §§44.420 - 44.422 .....	3923
40 TAC §§44.440 - 44.442 .....	3924
40 TAC §§44.501 - 44.505 .....	3925
COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES	
40 TAC §45.702.....	3931
40 TAC §45.805.....	3932
CONTRACTING TO PROVIDE PRIMARY HOME CARE	
40 TAC §47.63, §47.71.....	3934
40 TAC §47.89.....	3937
COMMUNITY CARE FOR AGED AND DISABLED	
40 TAC §§48.6026, 48.6080, 48.6096, 48.6112, 48.6114 .....	3938
MEDICALLY DEPENDENT CHILDREN PROGRAM	
40 TAC §§51.231, 51.245, 51.247.....	3941
40 TAC §51.513.....	3943
LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES	
40 TAC §97.2.....	3945
40 TAC §97.29.....	3951
40 TAC §97.201.....	3953
40 TAC §§97.244, 97.248, 97.257.....	3953
40 TAC §97.288.....	3955
40 TAC §97.322.....	3955
40 TAC §97.403.....	3956
40 TAC §97.602.....	3956
40 TAC §97.801.....	3958
40 TAC §§97.810 - 97.813 .....	3959
40 TAC §§97.820 - 97.823 .....	3960
40 TAC §§97.830 - 97.834 .....	3961
40 TAC §§97.840 - 97.846 .....	3963
40 TAC §§97.850 - 97.861 .....	3965
40 TAC §97.870, §97.871 .....	3970
40 TAC §97.880.....	3974
40 TAC §97.220.....	3976
40 TAC §97.281.....	3977
<b>TEXAS BOARD OF OCCUPATIONAL THERAPY     EXAMINERS</b>	
DEFINITIONS	
40 TAC §362.1.....	3978

DISPLAY OF LICENSES	
40 TAC §369.3.....	3979
PROVISION OF SERVICES	
40 TAC §372.1.....	3979
SUPERVISION	
40 TAC §373.3.....	3981
REGISTRATION OF FACILITIES	
40 TAC §376.4.....	3981
<b>WITHDRAWN RULES</b>	
<b>TEXAS MEDICAL DISCLOSURE PANEL</b>	
INFORMED CONSENT	
25 TAC §601.2.....	3983
<b>TEXAS DEPARTMENT OF INSURANCE</b>	
GENERAL ADMINISTRATION	
28 TAC §§1.1301 - 1.1306 .....	3983
<b>ADOPTED RULES</b>	
<b>ADVISORY BOARD OF ATHLETIC TRAINERS</b>	
ATHLETIC TRAINERS	
22 TAC §871.9, §871.12.....	3985
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN	
25 TAC §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15 .....	3986
25 TAC §27.1, §27.3.....	3986
25 TAC §§27.5, 27.7, 27.9, 27.11, 27.13 .....	3987
25 TAC §§27.15, 27.17, 27.19, 27.21, 27.23, 27.25, 27.27.....	3987
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
TEXAS HIGHWAY PATROL	
37 TAC §3.28.....	3987
37 TAC §3.57.....	3988
37 TAC §3.61.....	3988
BREATH ALCOHOL TESTING REGULATIONS	
37 TAC §§19.1, 19.2, 19.4 - 19.6 .....	3988
BICYCLES--USE AND SAFETY	
37 TAC §§32.1 - 32.3 .....	3989
METALS REGISTRATION	
37 TAC §§36.1 - 36.7, 36.9 - 36.24 .....	3989
37 TAC §§36.15, 36.16, 36.19 - 36.21 .....	3989
<b>DEPARTMENT OF AGING AND DISABILITY     SERVICES</b>	

<b>CONSUMER DIRECTED SERVICES OPTION</b>	
40 TAC §41.103.....	3992
40 TAC §41.203.....	3994
40 TAC §§41.205, 41.206, 41.225, 41.227.....	3994
40 TAC §§41.301, 41.303, 41.305 - 41.307, 41.309, 41.323, 41.325, 41.327, 41.329.....	3996
40 TAC §41.303.....	3999
<b>NURSE AIDES</b>	
40 TAC §§94.1 - 94.11.....	3999
40 TAC §§94.1 - 94.12.....	3999
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Department of Information Resources.....	4007
Texas Department of Insurance, Division of Workers' Compensation.....	4007
<b>TABLES AND GRAPHICS</b>	
.....	4009
<b>IN ADDITION</b>	
<b>Department of Assistive and Rehabilitative Services</b>	
Notice of Public Hearings and Opportunity for Public Comment on Revisions to 40 TAC Chapter 108, Subchapter N.....	4027
<b>Office of the Attorney General</b>	
Texas Water Code and Texas Health and Safety Code Settlement Notice.....	4027
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings.....	4027
<b>Texas Commission on Environmental Quality</b>	
Agreed Orders.....	4028
Enforcement Orders.....	4032
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions.....	4038
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	4040
Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions.....	4040
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336.....	4041
Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Bacteria in the Dallas/Fort Worth Area.....	4042
Notice of Water Quality Applications.....	4042
Notice of Water Rights Application.....	4043
<b>Texas Facilities Commission</b>	

Request for Proposals #303-4-20384.....	4043
Request for Proposals #303-4-20386.....	4044
Request for Proposals #303-5-20385.....	4044
Request for Proposals #303-5-20387.....	4044
<b>General Land Office</b>	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program.....	4044
<b>Texas Health and Human Services Commission</b>	
Correction of Public Notice.....	4045
Correction of Public Notice.....	4045
Correction of Public Notice.....	4046
Correction of Public Notice.....	4046
Notice of Public Hearing on Proposed Medicaid Payment Rates for Ambulance Services, Substance Use Disorder Services, Anesthesia Services, Physician Services (Including Physician-Administered Drugs, Evaluation and Management Services, General and Integumentary Services, and Eye and Ocular Services).....	4047
Notice of Public Hearing on Proposed Medicaid Payment Rates for Physical, Occupational, and Speech Therapy Provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Health Agencies (HHA), and Independent Therapists.....	4047
Public Notice.....	4048
<b>Department of State Health Services</b>	
Designation of Vickery Women's Health Center as a Site Serving Medically Underserved Populations.....	4048
<b>Texas Department of Insurance</b>	
Company Licensing.....	4049
<b>Texas Lottery Commission</b>	
Notice of Public Comment Hearing.....	4049
<b>Texas Low-Level Radioactive Waste Disposal Compact Commission</b>	
Notice of Receipt of Application for Importation of Waste and Import Agreement.....	4049
<b>Public Utility Commission of Texas</b>	
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority.....	4049
Announcement of Application for State-Issued Certificate of Franchise Authority.....	4049
Notice of Application for Amendment to Certificated Service Area Boundary.....	4050
Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier.....	4050
Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171.....	4050

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C.  
 Substantive Rule §26.171 .....4051  
 Public Notice of Workshop and Request for Comments .....4051  
**South East Texas Regional Planning Commission**  
 Request for Proposals for 9-1-1 Electrician Services .....4051

**Texas Department of Transportation**  
 Notice of Intent - Environmental Impact Statement for SH 45 South-  
 west, Travis and Hays Counties, Texas.....4051  
**Texas Water Development Board**  
 Applications for June 2013 .....4052

# THE GOVERNOR

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

## Appointments

### Appointments for June 4, 2013

Appointed as Assistant Adjutant General for Army, effective June 16, 2013, for a term at the pleasure of the Governor, William "Len" Smith of Austin. General Smith is replacing General Joyce Stevens of Tomball who retired.

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Debra Emerson of Pflugerville (Ms. Emerson is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Julia W. Erwin of Montgomery (Ms. Erwin is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Laurie Goforth of Dickinson (replacing Ismael Capelo of Pasadena whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Robin H. Lock of Lubbock (replacing Diane Taylor of Stephenville whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Nancy Shugart of Austin (replacing Rose Cruz of Laredo whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Jennifer Taylor of San Antonio (Ms. Taylor is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Paul J. Watson of Flower Mound (Mr. Watson is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2017, Myeshi Williams-Briley of Spring (Ms. Williams-Briley is being reappointed).

Rick Perry, Governor

TRD-201302313



## Appointments

Pending Senate confirmation, appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire January 31, 2015, A. Gerald "Gerry" Geistweidt of Mason. Representative Geistweidt is replacing Alejandro Meade, III of Mission.

Pending Senate confirmation, appointed to the Advisory Board of Athletic Trainers for a term to expire January 31, 2019, David R. Schmidt of San Antonio (Dr. Schmidt is being reappointed).

Pending Senate confirmation, appointed to the Advisory Board of Athletic Trainers for a term to expire January 31, 2019, Cathy P. Supak of Houston (replacing Michael Waters of Diboll whose term expired).

Pending Senate confirmation, appointed to the Commission on Jail Standards for a term to expire January 31, 2019, Donna S. Klaeger of Horseshoe Bay (reappointed).

Pending Senate confirmation, appointed to the Commission on Jail Standards for a term to expire January 31, 2019, Jerry Lowry, Sr. of New Caney (reappointed).

Pending Senate confirmation, appointed to the Commission on Jail Standards for a term to expire January 31, 2019, Larry May of Sweetwater (reappointed).

Pending Senate confirmation, appointed to the Manufactured Housing Board for a term to expire January 31, 2019, Bobby Ray McCarn of Port Lavaca (reappointed).

Pending Senate confirmation, appointed to the Manufactured Housing Board for a term to expire January 31, 2019, Donnie W. Wisenbaker of Sulphur Springs (reappointed).

Pending Senate confirmation, appointed to the Texas Optometry Board for a term to expire January 31, 2019, Judith Ann Chambers of Austin (replacing James Dyess of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas Optometry Board for a term to expire January 31, 2019, Melvin G. Cleveland, Jr. of Arlington (Dr. Cleveland is being reappointed).

Pending Senate confirmation, appointed to the Texas Optometry Board for a term to expire January 31, 2019, Virginia Sosa of Uvalde (Dr. Sosa is being reappointed).

Pending Senate confirmation, appointed to the Texas Lottery Commission for a term to expire February 1, 2019, J. Winston Krause of Austin. Mr. Krause is being reappointed.

Pending Senate confirmation, appointed to the Office of Independent Ombudsman for the Texas Juvenile Justice Department for a term to expire February 1, 2015, Deborah "Debbie" Unruh of Austin. Ms. Unruh is being reappointed.

Pending Senate confirmation, appointed to be the Executive Commissioner of Health and Human Services for a term to expire February 1, 2015, Kyle Janek of Austin. Commissioner Janek is being reappointed.

Pending Senate confirmation, appointed to the Texas Funeral Service Commission for a term to expire February 1, 2019, Jean L. Olinger of Childress (Dr. Olinger is being reappointed).

Pending Senate confirmation, appointed to the Texas Funeral Service Commission for a term to expire February 1, 2019, Jonathan Scepanski of McAllen (replacing Carol Becker of Aledo whose term expired).

Pending Senate confirmation, appointed to the Texas Funeral Service Commission for a term to expire February 1, 2019, Gary Shaffer of San Angelo (replacing Jess Fields, Sr. of Kingwood whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Education Chair for a term to expire February 1, 2015, Barbara Cargill of The Woodlands. Ms. Cargill is being reappointed.

Pending Senate confirmation, appointed to be the Adjutant General of Texas for a term to expire February 1, 2015, John F. Nichols of Spring Branch. General Nichols is being reappointed.

Pending Senate confirmation, appointed to be Judge of the 248th Judicial District Court, Harris County, for a term until the next General Election and until her successor shall be duly elected and qualified, Katherine Cabaniss of Houston. Ms. Cabaniss is replacing Judge Joan Campbell who resigned.

Pending Senate confirmation, appointed to the Texas Tech University System Board of Regents for a term to expire January 31, 2019, Juan D. "John" Esparza of Austin (replacing Jerry Turner of Blanco whose term expired).

Pending Senate confirmation, appointed to the Texas Tech University System Board of Regents for a term to expire January 31, 2019, Lawrence Frederick "Rick" Francis of El Paso (Mr. Francis is being reappointed).

Pending Senate confirmation, appointed to the Texas Tech University System Board of Regents for a term to expire January 31, 2019, Ivan Tim Lancaster of Abilene (replacing John Scovell of Dallas whose term expired).

Pending Senate confirmation, appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2019, David Alders of Nacogdoches (replacing Carlos Amaral of Plano whose term expired).

Pending Senate confirmation, appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2019, John R. "Bob" Garrett of Tyler (Mr. Garrett is being reappointed).

Pending Senate confirmation, appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2019, Barry Nelson of Dallas (replacing James Dickerson, Jr. of New Braunfels whose term expired).

Pending Senate confirmation, appointed to the State Preservation Board for a term to expire February 1, 2015, M. Cris Crouch Graham of Fredericksburg. Mr. Graham is replacing Ida Louise Steen of San Antonio whose term expired.

Pending Senate confirmation, appointed to the Texas Workforce Commission for a term to expire February 1, 2019, Andre Alcantar of Pflugerville. Commissioner Alcantar is being reappointed.

Pending Senate confirmation, appointed to the Texas State University System Board of Regents for a term to expire February 1, 2019, Charles Amato of San Antonio (Mr. Amato is being reappointed).

Pending Senate confirmation, appointed to the Texas State University System Board of Regents for a term to expire February 1, 2019, Vernon Reaser, III of Bellaire (replacing Patricia Pollard of Bellaire whose term expired).

Pending Senate confirmation, appointed to the Texas State University System Board of Regents for a term to expire February 1, 2019, William F. Scott of Nederland (Mr. Scott is being reappointed).

Pending Senate confirmation, appointed to the Department of Information Resources for a term to expire February 1, 2019, Charles E. Bacarisse of Houston (Mr. Bacarisse is being reappointed).

Pending Senate confirmation, appointed to the Department of Information Resources for a term to expire February 1, 2019, Cynthia Villa of El Paso (replacing Rosemary Martinez of Brownsville whose term expired).

Pending Senate confirmation, appointed to the State Health Services Council for a term to expire February 1, 2019, Jacinto Juarez of Laredo (replacing Beverly Barron of Odessa whose term expired).

Pending Senate confirmation, appointed to the State Health Services Council for a term to expire February 1, 2019, Jeffrey A. Ross of Bellaire (Dr. Ross is being reappointed).

Pending Senate confirmation, appointed to the State Health Services Council for a term to expire February 1, 2019, Maria F. Teran of El Paso (Ms. Teran is being reappointed).

Pending Senate confirmation, appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2019, Paula Gomez of Brownsville (Ms. Gomez is being reappointed).

Pending Senate confirmation, appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2019, Michael M. Hawkins of Austin (Dr. Hawkins is being reappointed).

Pending Senate confirmation, appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2019, Suzanne Hildebrand of Live Oak (Ms. Hildebrand is being reappointed).

Pending Senate confirmation, appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2019, Cheryl Locke Pingel of Austin (replacing Louis West of Taylor whose term expired).

Pending Senate confirmation, appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2019, Bradley Drake of Paris (reappointed).

Pending Senate confirmation, appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2019, Wallace E. "Wally" Kraft, II of Paris (reappointed).

Pending Senate confirmation, appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2019, Terri L. Bauer of Richardson (reappointed).

Pending Senate confirmation, appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2019, Louis Gonzales, III of Round Rock (reappointed).

Pending Senate confirmation, appointed to the State Board for Educator Certification for a term to expire February 1, 2019, Laurie Bricker of Houston (Ms. Bricker is being reappointed).

Pending Senate confirmation, appointed to the State Board for Educator Certification for a term to expire February 1, 2019, Sandra D. Bridges of Rockwall (Ms. Bridges is being reappointed).

Pending Senate confirmation, appointed to the State Board for Educator Certification for a term to expire February 1, 2019, Dawn Buckingham of Lakeway (replacing Homer Trevino of Waco whose term expired).

Pending Senate confirmation, appointed to the State Board for Educator Certification for a term to expire February 1, 2019, Jill H. Druessedow of Haskell (Ms. Druessedow is being reappointed).

Pending Senate confirmation, appointed to be the Inspector General for Health and Human Services for a term to expire February 1, 2014, Douglas C. Wilson of Pflugerville. Mr. Wilson is being reappointed.

Pending Senate confirmation, appointed to the Central Colorado River Authority for a term to expire February 1, 2019, Mathew Gaines of Coleman (reappointed).

Pending Senate confirmation, appointed to the Central Colorado River Authority for a term to expire February 1, 2019, Bruce Pittard of Novice (reappointed).



Pending Senate confirmation, appointed to the Central Colorado River Authority for a term to expire February 1, 2019, Andrew Young of Coleman (reappointed).

Pending Senate confirmation, appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2019, Jon E. Hodde of Brenham (Mr. Hodde is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2019, William E. Merten of Houston (replacing David Smyth, Sr. of Uvalde whose term expired).

Pending Senate confirmation, appointed to the University of Texas System Board of Regents for a term to expire February 1, 2019, Ernest Aliseda of McAllen (replacing James Dannenbaum of Houston whose term expired).

Pending Senate confirmation, appointed to the University of Texas System Board of Regents for a term to expire February 1, 2019, Paul L. Foster of El Paso (Mr. Foster is being reappointed).

Pending Senate confirmation, appointed to the University of Texas System Board of Regents for a term to expire February 1, 2019, Jeffery D. Hildebrand of Houston (replacing Printice Gary of Dallas whose term expired).

Pending Senate confirmation, appointed to the Board of Pardons and Paroles for a term to expire February 1, 2019, Romulo "Roman" Chavez of Spring (replacing Thomas Leeper of Huntsville whose term expired).

Pending Senate confirmation, appointed to the Board of Pardons and Paroles for a term to expire February 1, 2019, Cynthia Tauss of League City (replacing Conrith Davis of Sugar Land whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2017, Jingyu Gu of Austin (replacing Chung-Hwei Chernly of Hurst whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2019, Rodrigo Ceballos of El Paso (replacing Terry Rascoe of Temple whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2019, Allen Cline of Austin (Mr. Cline is being reappointed).

Pending Senate confirmation, appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2019, Rachelle Webb of Austin (Ms. Webb is being reappointed).

Pending Senate confirmation, appointed to be the Commissioner of Workers' Compensation for a term to expire February 1, 2015, Roderick Bordelon, Jr. of Austin. Commissioner Bordelon is being reappointed.

Pending Senate confirmation, appointed to the Texas Municipal Retirement System for a term to expire February 1, 2019, Bill Philibert of Pasadena (replacing Ben Gorzell, Jr. of Helotes whose term expired).

Pending Senate confirmation, appointed to the Texas Municipal Retirement System for a term to expire February 1, 2019, Julie Oakley of Spicewood (Ms. Oakley is being reappointed).

Pending Senate confirmation, appointed to be presiding officer of the Camino Real Regional Mobility Authority for a term to expire February 1, 2015, Scott A. McLaughlin of El Paso. Mr. McLaughlin is being reappointed.

Pending Senate confirmation, appointed to the Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2015, Robert "Rob" Kyker of Richardson. Mr. Kyker is replacing J. Randall Watson of Burleson who resigned.

Pending Senate confirmation, appointed to be presiding officer of the Sulphur River Regional Mobility Authority for a term to expire February 1, 2015, E. Delbert Horton, III of Cooper. Dr. Horton is being reappointed.

Pending Senate confirmation, appointed to be presiding officer of the Central Texas Regional Mobility Authority for a term to expire February 1, 2015, Ray A. Wilkerson of Austin. Mr. Wilkerson is being reappointed.

Pending Senate confirmation, appointed to the State Securities Board for a term to expire January 20, 2019, Beth Ann Blackwood of Dallas (reappointed).

Pending Senate confirmation, appointed to the State Securities Board for a term to expire January 20, 2019, E. Wallace "Wally" Kinney of Dripping Springs (reappointed).

Pending Senate confirmation, appointed to the Texas School Safety Center Board for a term to expire February 1, 2015, Barbara Ann Beto of Round Rock (replacing Amy Clapper of Georgetown whose term expired).

Pending Senate confirmation, appointed to the Texas School Safety Center Board for a term to expire February 1, 2015, Daniel F. Gilliam of Victoria (Judge Gilliam is being reappointed).

Pending Senate confirmation, appointed to the Texas School Safety Center Board for a term to expire February 1, 2015, Carl A. Montoya of Brownsville (Dr. Montoya is being reappointed).

Pending Senate confirmation, appointed to the Texas School Safety Center Board for a term to expire February 1, 2015, Adelaida "Laila" Olivarez of Austin (Ms. Olivarez is being reappointed).

Pending Senate confirmation, appointed to the Texas School Safety Center Board for a term to expire February 1, 2015, James R. Pendell of Clint (Mr. Pendell is being reappointed).

Pending Senate confirmation, appointed to the State Pension Review Board for a term to expire January 31, 2019, Andrew Cable of Wimberley (Judge Cable is being reappointed).

Pending Senate confirmation, appointed to the State Pension Review Board for a term to expire January 31, 2019, Robert M. May of Austin (replacing Norman Parrish of The Woodlands whose term expired).

Pending Senate confirmation, appointed to the State Pension Review Board for a term to expire January 31, 2019, Richard E. McElreath of Amarillo (Mr. McElreath is being reappointed).

Pending Senate confirmation, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2017, Rebecca "Becky" Gregory of Dallas (replacing Rob Kyker of Richardson who resigned).

Pending Senate confirmation, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2019, Carol Bush of Waxahachie (Judge Bush is being reappointed).

Pending Senate confirmation, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2019, Scott W. Fisher of Bedford (Reverend Fisher is being reappointed).

Pending Senate confirmation, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2019, D. Scott Matthew of Georgetown (replacing Michael Meade of Simonton whose term expired).

Pending Senate confirmation, appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2019, Mary Lou Mendoza of San Antonio (Ms. Mendoza is being reappointed).

Pending Senate confirmation, appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2019, Joseph "Jody" Gonzalez of Krugerville (Chief Gonzalez is being reappointed).

Pending Senate confirmation, appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2019, Joseph R. Gutheinz, Jr. of Houston (replacing Arthur Pertile, III of Katy whose term expired).

Pending Senate confirmation, appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2019, John T. McMakin of LaRue (Chief McMakin is being reappointed).

Pending Senate confirmation, appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2019, Leonardo L. Perez of Brownsville (Chief Perez is being reappointed).

Pending Senate confirmation, appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2015, Daniel S. Durany of Fort Worth (replacing Anna Hundley of Dallas whose term expired).

Pending Senate confirmation, appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2015, Tammy Lemoine of Center (Dr. Lemoine is being reappointed).

Pending Senate confirmation, appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2015, Frank C. McCamant of Austin (Mr. McCamant is being reappointed).

Pending Senate confirmation, appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2015, Callie M. Vivion-Matthews of Fort Worth (Ms. Vivion-Matthews is being reappointed).

Pending Senate confirmation, appointed to be the Injured Employee Public Counsel for a term to expire February 1, 2015, Norman Darwin of Benbrook. Mr. Darwin is being reappointed.

Pending Senate confirmation, appointed to the Texas State Affordable Housing Corporation Board of Directors for a term to expire February 1, 2019, William H. Dietz, Jr. of Waco (Mr. Dietz is being reappointed).

Pending Senate confirmation, appointed to the Texas State Affordable Housing Corporation Board of Directors for a term to expire February 1, 2019, Alejandro G. "Alex" Meade, III of Mission (replacing Jo Van Hovel of Temple whose term expired).

Pending Senate confirmation, appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire January 31, 2019, Angelos G. Angelou of Austin. Mr. Angelou is replacing Walker Moody of Houston whose term expired.

Pending Senate confirmation, appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2019, Anna Maria Farias of Brownsville (replacing P. Mike McCullough of Dallas whose term expired).

Pending Senate confirmation, appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2019, Nancy P. Paup of Fort Worth (replacing Cecilia Moreno of Laredo whose term expired).

Pending Senate confirmation, appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2019, George R. Schrader of Dallas (Mr. Schrader is being reappointed).

Pending Senate confirmation, appointed to the Commission on Human Rights for a term to expire February 1, 2019, Thomas M. Anderson of Richmond (reappointed).

Pending Senate confirmation, appointed to the Commission on Human Rights for a term to expire February 1, 2019, Danny L. Osterhout of Andrews (reappointed).

Pending Senate confirmation, appointed to the Texas Facilities Commission for a term to expire January 31, 2019, Michael J. Novak of San Antonio. Mr. Novak is being reappointed.

Pending Senate confirmation, appointed to the Texas Workforce Commission for a term to expire February 1, 2015, Esperanza "Hope" Andrade of Boerne. Secretary Andrade is replacing Thomas Pauken of Dallas who resigned.

Pending Senate confirmation, appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2013, James Scott of Nederland. Mr. Scott is replacing William Scott of Nederland who resigned.

Pending Senate confirmation, appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2019, Anthony G. "Tony" Buzbee of Friendswood (replacing Richard Box of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2019, Morris E. Foster of Austin (Mr. Foster is being reappointed).

Pending Senate confirmation, appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2019, Charles W. Schwartz of Houston (replacing James Wilson, Jr. of Sugar Land whose term expired).

Pending Senate confirmation, appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2019, Leslie Bingham Escareño of Brownsville (reappointed).

Pending Senate confirmation, appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2019, Lowell A. Keig of Austin (reappointed).

Pending Senate confirmation, appointed to be presiding officer of the Alamo Regional Mobility Authority for a term to expire February 1, 2014, John G. Clamp of San Antonio. Mr. Clamp is replacing William Thornton of San Antonio whose term expired.

Pending Senate confirmation, appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2019, Robert S. "Barney" Barnwell III of Magnolia (Mr. Barnwell is being reappointed).

Pending Senate confirmation, appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2019, Luanne Caraway of Kyle (replacing Cheryl Johnson of Friendswood whose term expired).

Pending Senate confirmation, appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2019, Raymond Palacios, Jr. of El Paso (Mr. Palacios is being reappointed).

Pending Senate confirmation, appointed to the Texas Transportation Commission for a term to expire February 1, 2019, Jeff Austin, III of Tyler (Mr. Austin is being reappointed).

Pending Senate confirmation, appointed to the Texas Transportation Commission for a term to expire February 1, 2019, Victor Vandergriff of Arlington (replacing William Meadows of Fort Worth whose term expired).

Pending Senate confirmation, appointed to the Texas Crime Stoppers Council for a term to expire September 1, 2013, Susan Rogers of Odessa. Ms. Rogers is replacing Katherine Cabaniss of Houston who resigned.

Pending Senate confirmation, appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2015, Beverly Jackson Loss of Wolfe City (replacing Victor Kilman of Lubbock who resigned).

Pending Senate confirmation, appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2019, Jack D. "Dan" Bremer of New Braunfels (replacing Leslie Butler of Fort Worth whose term expired).

Pending Senate confirmation, appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2019, Kevin M. Jackson of Austin (Mr. Jackson is being reappointed).

Pending Senate confirmation, appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2019, Alfred "Al" Matson of Tyler (replacing James Daugherty of Irving whose term expired).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Troy Allen of Edcouch (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Dario V. Guerra, Jr. of Edinburg (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Arturo "Sonny" Hinojosa, Jr. of Edinburg (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Sonia Lambert of San Benito (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Lance Neuhaus of Mercedes (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Joe A. Pennington of Raymondville (reappointed).

Pending Senate confirmation, appointed to the Rio Grande Regional Water Authority for a term to expire February 1, 2017, Frank "Jo Jo" White of Mercedes (reappointed).

Pending Senate confirmation, appointed to the Risk Management Board for a term to expire February 1, 2019, Lloyd Garland of Lubbock (reappointed).

Pending Senate confirmation, appointed to the Risk Management Board for a term to expire February 1, 2019, John W. Youngblood of Cameron (reappointed).

Pending Senate confirmation, appointed to the Credit Union Commission for a term to expire February 15, 2019, Allyson "Missy" Morrow of San Benito (Ms. Morrow is being reappointed).

Pending Senate confirmation, appointed to the Credit Union Commission for a term to expire February 15, 2019, Barbara Kay Stewart of Daingerfield (replacing Dale Kimble of Denton whose term expired).

Pending Senate confirmation, appointed to the Credit Union Commission for a term to expire February 15, 2019, Vik Vad of Austin (replacing Thomas Butler of Deer Park whose term expired).

Pending Senate confirmation, appointed as Judge of the 357th Judicial District Court, Cameron County, for a term until the next General Election and until his successor shall be duly elected and qualified, Oscar X. Garcia of Port Isabel. Mr. Garcia is replacing Judge Leonel Alejandro who resigned.

Pending Senate confirmation, appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2019, Joseph P. DeWoody of Fort Worth (replacing Ronald Kitchens of Harper whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2019, Charles T. "Tom" Hallmark of Hearne (Dr. Hallmark is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Professional Geoscientists for a term to expire February 1, 2019, W. David Prescott, II of Amarillo (replacing Barbara Roeling of Austin whose term expired).

Pending Senate confirmation, appointed to the Health and Human Services Council for a term to expire February 1, 2019, James Richard Barajas of Fort Worth (replacing Sharon Barnes of Rosharon whose term expired).

Pending Senate confirmation, appointed to the Health and Human Services Council for a term to expire February 1, 2019, Leon J. Leach of New Ulm (Dr. Leach is being reappointed).

Pending Senate confirmation, appointed to the Health and Human Services Council for a term to expire February 1, 2019, Thomas C. Wheat of University Park (Mr. Wheat is being reappointed).

Pending Senate confirmation, appointed to the Texas Real Estate Commission for a term to expire January 31, 2019, Adrian A. Arriaga, Sr. of McAllen (Mr. Arriaga is being reappointed).

Pending Senate confirmation, appointed to the Texas Real Estate Commission for a term to expire January 31, 2019, Chart H. Westcott of Dallas (replacing R. Christopher Day of Jacksonville whose term expired).

Pending Senate confirmation, appointed to the Texas Real Estate Commission for a term to expire January 31, 2019, Avis Wukasch of Georgetown (Ms. Wukasch is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, Richard Ball of Mineral Wells (Mr. Ball is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, F. LeRoy Bell of Tuscola (Mr. Bell is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, Peter Bennis of Fort Worth (Mr. Bennis is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, William A. "Bill" Masterson of Guthrie (Mr. Masterson is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, G. Dave Scott, III of Richmond (Mr. Scott is being reappointed).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, Raleigh R.

White, IV of Temple (replacing Grady Barr of Abilene whose term expired).

Pending Senate confirmation, appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, Salvatore A. Zaccagnino of Caldwell (Mr. Zaccagnino is being reappointed).

Pending Senate confirmation, appointed as District Attorney of Kaufman County for a term until the next General Election and until her successor shall be duly elected and qualified, Erleigh Norville Wiley of Forney. Judge Wiley is replacing Mike McLelland who is deceased.

Pending Senate confirmation, appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2019, J. Eric Gambrell of Dallas (Mr. Gambrell is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2019, R. Terrell McCombs of San Antonio (Mr. McCombs is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2019, Annette P. Raggette of Austin (replacing J. David Nelson of Lubbock whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2019, Charles "Chuck" Anastos of Corpus Christi (Mr. Anastos is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2019, M. Chad Davis of Lubbock (replacing Linda Steinbrueck of Driftwood whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2019, William D. "Davey" Edwards of Alvord (replacing Brandon Pinson of Midland whose term expired).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Roland L. Brown of Midlothian (Mr. Brown is being reappointed).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Edward "Eddie" Martin, Jr. of Austin (replacing Robert Bowling, IV of El Paso whose term expired).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Scott A. McDonald of Canyon (Mr. McDonald is being reappointed).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Douglas O. Robinson of Coppel (Mr. Robinson is being reappointed).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Rolando R. Rubiano of Harlingen (Mr. Rubiano is being reappointed).

Pending Senate confirmation, appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2015, Larry E. Wilkinson of Friendswood (Mr. Wilkinson is being reappointed).

Pending Senate confirmation, appointed as Presiding Judge of the Second Administrative Judicial Region for a term to expire four years from the date of qualification, Olen U. Underwood of Willis. Judge Underwood is being reappointed.

Pending Senate confirmation, appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2019, Thomas R. Kelsey of Houston (Mr. Kelsey is being reappointed).

Pending Senate confirmation, appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2019, John E. Zacek of Inez (replacing Mark Jones of Brady whose term expired).

Pending Senate confirmation, appointed to the Sabine River Authority Board of Directors for a term to expire July 6, 2017, M. Sharon Newcomer of Orange. Ms. Newcomer is replacing Don Covington of Orange whose term expired.

Pending Senate confirmation, appointed to the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2019, Michael Miller of Belton (Mr. Miller is being reappointed).

Pending Senate confirmation, appointed to the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2019, Keith Rosenbaum of Joshua (replacing Sandra DeSobe of Houston whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2019, Jennifer Smothermon of Abilene (Ms. Smothermon is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2019, Jeffrey A. Tout of Granbury (replacing Karen Gordon of Port O'Connor whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2019, Philip Vickers of Aledo (replacing Frank Bryan, Jr. of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2019, Shari Waldie of Austin (Ms. Waldie is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Professional Engineers for a term to expire September 26, 2013, Sina K. Nejad of Beaumont (replacing Gary Raba of San Antonio who resigned).

Pending Senate confirmation, appointed to the Texas Board of Professional Engineers for a term to expire September 26, 2017, R. Kyle Womack of Horseshoe Bay (replacing G. Kemble Bennett of College Station whose term expired).

Pending Senate confirmation, appointed to the Evergreen Underground Water Conservation District for a term to expire February 1, 2017, Jason B. Peeler of Floresville. Mr. Peeler is being reappointed.

Pending Senate confirmation, appointed to the Texas Diabetes Council for a term to expire February 1, 2019, Carley Gomez-Meade of Austin (replacing Neil Burrell of Beaumont whose term expired).

Pending Senate confirmation, appointed to the Texas Diabetes Council for a term to expire February 1, 2019, Alicia Gracia of Brownsville (replacing Melissa Wilson of Corpus Christi whose term expired).

Pending Senate confirmation, appointed to the Texas Diabetes Council for a term to expire February 1, 2019, Jason Michael Ryan of Houston (replacing Timothy Cavitt of McKinney whose term expired).

Pending Senate confirmation, appointed to the Texas Diabetes Council for a term to expire February 1, 2019, Curtis Triplitt of San Antonio (Dr. Triplitt is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2019, John H. Riggs, III of Midland (replacing Janette Kurban of Pantego whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2019, John W. Steinberg of Marion (replacing Armando Elizarde, Jr. of Harlingen whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2019, Cynthia Tays of Austin (Dr. Tays is being reappointed).

Pending Senate confirmation, appointed to the Finance Commission of Texas for a term to expire February 1, 2018, William M. Lucas of Center. Mr. Lucas is replacing Darby Ray Byrd, Sr. of Orange who resigned.

Pending Senate confirmation, appointed to the Automobile Burglary and Theft Prevention Authority for a term to expire February 1, 2019, Linda Kinney of Dripping Springs (Ms. Kinney is being reappointed).

Pending Senate confirmation, appointed to the Automobile Burglary and Theft Prevention Authority for a term to expire February 1, 2019, Ashley Hunter of Austin (replacing Richard Watson of Spicewood whose term expired).

Pending Senate confirmation, appointed to the University of North Texas System Board of Regents for a term to expire May 22, 2017, Milton B. Lee, II of San Antonio. Mr. Lee is replacing Ernest Kuehne, Jr. of Dallas who resigned.

Pending Senate confirmation, appointed to the Texas Lottery Commission for a term to expire February 1, 2017, Veronica Edwards of San Antonio. Ms. Edwards is replacing Cynthia Tauss of League City who resigned.

Pending Senate confirmation, appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2019, Thomas P. Wingate of Mission. Judge Wingate is replacing Annette Raggette of Austin whose nomination to replace J. David Nelson of Lubbock was withdrawn.

Pending Senate confirmation, appointed to the Texas Public Finance Authority for a term to expire February 1, 2019, Gerald Alley of Arlington (Mr. Alley is being reappointed).

Pending Senate confirmation, appointed to the Texas Public Finance Authority for a term to expire February 1, 2019, Walker Moody of Houston (replacing Joe Meister of Dallas whose term expired).

Pending Senate confirmation, appointed to the Texas Public Finance Authority for a term to expire February 1, 2019, Ruth Schiermeyer of Lubbock (Ms. Schiermeyer is being reappointed).

Pending Senate confirmation, appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2019, Glenn Lewis of Fort Worth (Representative Lewis is being reappointed).

Pending Senate confirmation, appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2019, Sarah D. Monty of Houston (replacing Richard Holland of Plano whose term expired).

Pending Senate confirmation, appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2019, Erik D. Salwen of Houston (Mr. Salwen is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2015, Karen L. Gordon of Port O'Connor. Ms. Gordon is replacing Kevin Lindsey of Mission who resigned.

Pending Senate confirmation, appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2015, Joseph O. Slovacek of Houston. Mr. Slovacek is replacing Victor Vandergriff of Arlington who resigned.

Pending Senate confirmation, appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2015, Zebulun Nash of Houston (reappointed).

Pending Senate confirmation, appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2015, Douglas E. Walker of Beach City (reappointed).

Pending Senate confirmation, appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2013, Christopher M. Huckabee of Fort Worth. Mr. Huckabee is replacing James Lee of Houston who resigned.

Pending Senate confirmation, appointed to the Commission on Jail Standards for a term to expire January 31, 2015, Dennis D. Wilson of Groesbeck. Sheriff Wilson is replacing Sheriff Franklin Terry of White Deer who resigned.

Pending Senate confirmation, appointed to the Texas Board of Licensure for Professional Medical Physicists for a term to expire February 1, 2019, Geoffrey "Geoff" Clarke of Boerne (replacing Richard Wendt, III of Bellaire whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Licensure for Professional Medical Physicists for a term to expire February 1, 2019, Douglas A. Johnson of College Station (Mr. Johnson is being reappointed).

Pending Senate confirmation, appointed to the Texas Board of Licensure for Professional Medical Physicists for a term to expire February 1, 2019, John R. Leahy of Austin (Dr. Leahy is being reappointed).

Pending Senate confirmation, appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Steven J. Austin of Amarillo (Dr. Austin is being reappointed).

Pending Senate confirmation, appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Kirby Bunel, Jr. of Texarkana (replacing Maxwell Finn of Dallas whose term expired).

Pending Senate confirmation, appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Timothy J. O'Hare of Farmers Branch (replacing Ann Pauli of El Paso who is deceased).

Pending Senate confirmation, appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Lois M. Palermo of League City (replacing Alicia Grant of Richardson whose term expired).

Pending Senate confirmation, appointed to the State Board of Dental Examiners for a term to expire February 1, 2019, Lewis M. White of Humble (Mr. White is being reappointed).

Pending Senate confirmation, appointed to the Texas Private Security Board for a term to expire January 31, 2019, Charles Crenshaw of Spicewood (Mr. Crenshaw is being reappointed).

Pending Senate confirmation, appointed to the Texas Private Security Board for a term to expire January 31, 2019, D. Wade Hayden of San Antonio (replacing Doris Washington of Grapevine whose term expired).

Pending Senate confirmation, appointed to the Correctional Managed Health Care Committee for a term to expire February 1, 2017, Harold Berenzweig of Fort Worth. Dr. Berenzweig is being reappointed.

Pending Senate confirmation, appointed to the Parks and Wildlife Commission for a term to expire February 1, 2019, Ralph H. Duggins, III of Fort Worth (Mr. Duggins is being reappointed).

Pending Senate confirmation, appointed to the Parks and Wildlife Commission for a term to expire February 1, 2019, James H. Lee of Houston (replacing Karen Hixon of San Antonio whose term expired).

Pending Senate confirmation, appointed to the Aging and Disability Services Council for a term to expire February 1, 2015, Sheri Harmonson of El Paso (replacing Carolyn Harvey of Tyler who resigned).

Pending Senate confirmation, appointed to the Aging and Disability Services Council for a term to expire February 1, 2019, Barry L. Anderson of Grand Prairie (replacing Gary Newsom of Austin whose term expired).

Pending Senate confirmation, appointed to the Aging and Disability Services Council for a term to expire February 1, 2019, J. Russell Shannon of Andrews (Mr. Shannon is being reappointed).

Pending Senate confirmation, appointed to the Aging and Disability Services Council for a term to expire February 1, 2019, Donna Stauber of Waco (Dr. Stauber is being reappointed).

Pending Senate confirmation, appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2019, Bobby Druessedow, Jr. of Aledo (Mr. Druessedow is being reappointed).

Pending Senate confirmation, appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2019, Michael E. Garrett of Missouri City (Mr. Garrett is being reappointed).

Pending Senate confirmation, appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2019, B. Lee Sonnenberg of Lubbock (replacing Michelle Goodwin of Fort Worth whose term expired).

Pending Senate confirmation, appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2019, Lee Chayes of El Paso (Ms. Chayes is being reappointed).

Pending Senate confirmation, appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2019, Donald "Don" Roy of Mt. Pleasant (Mr. Roy is being reappointed).

Pending Senate confirmation, appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2019, Amanda B. Davis of Buffalo (replacing David Coco of Austin whose term expired).

Pending Senate confirmation, appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2019, Michael L. Allen of Ingram (Mr. Allen is being reappointed).

Pending Senate confirmation, appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2019, Claudell Kercheville of Kerrville (Ms. Kercheville is being reappointed).

Pending Senate confirmation, appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2019, Brian Wright of Center Point (replacing Scott Parker of Kerrville whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2019, Susan Fletcher of Frisco (replacing John Steinberg of Marion whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2019, Donna J. Hugly Franks of Addison (replacing David King of Lago Vista whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2019, William "Bill" Lawrence of Highland Village (replacing Evelyn Huron of San Antonio whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2019, Stephen "Steve" Pena of Georgetown (Mr. Pena is being reappointed).

Pending Senate confirmation, appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2019, Thomas F. Butler of Deer Park (replacing Frank Denton of Conroe whose term expired).

Pending Senate confirmation, appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2019, Deborah Yurco of Austin (Ms. Yurco is being reappointed).

Pending Senate confirmation, appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2019, Robb Catalano of Fort Worth (replacing Jan Krockner of Houston whose term expired).

Pending Senate confirmation, appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2019, Martin "Ringo" Deleon, Jr. of Corpus Christi (Mr. Deleon is being reappointed).

Pending Senate confirmation, appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2019, Kathy C. Flanagan of Houston (Dr. Flanagan is being reappointed).

Pending Senate confirmation, appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2019, Trenton R. Marshall of Burleson (replacing Clara Hernandez of El Paso whose term expired).

Pending Senate confirmation, appointed to be Nonresident Violator Compact Administrator for a term to expire February 1, 2015, Rebecca L. Davio of Austin. Dr. Davio is being reappointed.

Pending Senate confirmation, appointed to the Texas Board of Nursing for a term to expire January 31, 2019, Nina Almasy of Austin (reappointed).

Pending Senate confirmation, appointed to the Texas Board of Nursing for a term to expire January 31, 2019, Patricia "Patti" Clapp of Dallas (reappointed).

Pending Senate confirmation, appointed to the Texas Board of Nursing for a term to expire January 31, 2019, Marilyn Davis of Sugar Land (reappointed).

Pending Senate confirmation, appointed to the OneStar Foundation for a term to expire March 15, 2014, Alison L. Meador of Austin (replacing Lewis Timberlake of Austin who is deceased).

Pending Senate confirmation, appointed to the OneStar Foundation for a term to expire March 15, 2016, Joan "Joanie" Haley of Houston (Ms. Haley is being reappointed).

Pending Senate confirmation, appointed to the OneStar Foundation for a term to expire March 15, 2016, Melissa G. Pardue of Austin (Ms. Pardue is being reappointed).

Pending Senate confirmation, appointed to the OneStar Foundation for a term to expire March 15, 2016, Brenda Swinney of Paige (replacing Scott Sanders of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas Physician Assistant Board for a term to expire February 1, 2019, Teralea Davis Jones of Beeville (Ms. Jones is being reappointed).

Pending Senate confirmation, appointed to the Texas Physician Assistant Board for a term to expire February 1, 2019, Michael Reis of Woodway (Dr. Reis is being reappointed).

Pending Senate confirmation, appointed to the Texas Physician Assistant Board for a term to expire February 1, 2019, R. Blayne Rush of Frisco (replacing James Endicott, Jr. of Harker Heights whose term expired).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Michael Arambula of San Antonio (Dr. Arambula is being reappointed).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Devinder S. Bhatia of Houston (replacing Melinda McMichael of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Frank S. Denton of Conroe (replacing Patricia Blackwell of Midland whose term expired).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, J. Scott Holliday of University Park (Dr. Holliday is being reappointed).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Margaret Carter McNeese of Houston (Dr. McNeese is being reappointed).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Karl W. Swann of San Antonio (replacing W. Roy Smythe of Belton whose term expired).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2019, Timothy Webb of Houston (Mr. Webb is being reappointed).

Pending Senate confirmation, appointed to the Texas Medical Board for a term to expire April 13, 2015, Robert Simonson of Duncanville. Dr. Simonson is replacing Patrick Crocker of Austin who resigned.

Pending Senate confirmation, appointed to the San Jacinto River Authority Board of Directors for a term to expire October 16, 2013, Michael "Mike" Bleier of Montgomery. Mr. Bleier is replacing David Kleimann of Willis who resigned.

Pending Senate confirmation, appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2019, William R. Carbonara of Cuero (replacing Frank Pagel of Tivoli whose term expired).

Pending Senate confirmation, appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2019, Darrell G. McLain of Gonzales (replacing Myrna McLeroy of Gonzales whose term expired).

Pending Senate confirmation, appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2019, Don B. Meador of San Marcos (replacing James Powers of Dripping Springs whose term expired).

Pending Senate confirmation, appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2015, Scott H. Sachtleben of Ganado (replacing John Cotton, Jr. of Ganado who is deceased).

Pending Senate confirmation, appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2019, Glenn T. Martin of Edna (Mr. Martin is being reappointed).

Pending Senate confirmation, appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2019, Leonard A. Steffek of Edna (replacing Jon Bradford of Edna whose term expired).

Pending Senate confirmation, appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2019, Charles "Charlie" Taylor of Palacios (replacing Olivia Jarratt of Edna whose term expired).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2015, Valerie E. Ertz of Dallas. Ms. Ertz is replacing Harold Jenkins of Irving who resigned.

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2017, Amanda B. Davis of Buffalo. Ms. Davis is replacing Amanda Davis of Buffalo who resigned.

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, Henry Borbolla, III of Fort Worth (Mr. Borbolla is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, Tommy G. Fordyce of Huntsville (Mr. Fordyce is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, Jess Laird of Athens (Mr. Laird is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, David Leonard of Liberty (Mr. Leonard is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, James "Jim" Neale of Dallas (Mr. Neale is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, Amiral Rupani of Dallas (Mr. Rupani is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, AnaLaura Saucedo of Mesquite (Ms. Saucedo is being reappointed).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, Dudley Skyrme of Palestine (replacing Nancy Lavinski of Palestine whose term expired).

Pending Senate confirmation, appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2019, C. Dwayne Somerville of Mexia (replacing Linda Timmerman of Streetman whose term expired).

Pending Senate confirmation, appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2019, Timothy Brown of Dallas (reappointed).

Pending Senate confirmation, appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2019, Mark M. Talbot of McAllen (reappointed).

Pending Senate confirmation, appointed to the Governing Board of the Texas Indigent Defense Commission for a term to expire February 1, 2015, Don Hase of Arlington (replacing J. Knox Fitzpatrick of Dallas whose term expired).

Pending Senate confirmation, appointed to the Governing Board of the Texas Indigent Defense Commission for a term to expire February 1, 2015, Anthony C. "Tony" Odiome of Georgetown (Mr. Odiome is being reappointed).

Pending Senate confirmation, appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2015, Brett Cornwell of College Station (replacing Daniel Hanson of Dallas who resigned).

Pending Senate confirmation, appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2019, John-Patrick Lane of Fort Worth (replacing Michael Davis, Jr. of Austin whose term expired).

Pending Senate confirmation, appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2019, David Margrave of San Antonio (Mr. Margrave is being reappointed).

Pending Senate confirmation, appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2019, David L. Miller of Abernathy (Mr. Miller is being reappointed).

Pending Senate confirmation, appointed to the Judicial Compensation Commission for a term to expire February 1, 2017, William "Bill" Brod, Jr. of Pasadena (replacing Harold Jenkins of Irving who resigned).

Pending Senate confirmation, appointed to the Judicial Compensation Commission for a term to expire February 1, 2017, Conrith Warren Davis of Sugar Land (replacing Romulo Chavez of Spring who resigned).

Pending Senate confirmation, appointed to the Judicial Compensation Commission for a term to expire February 1, 2019, Patrick "Pat" Mizell of Houston (Mr. Mizell is being reappointed).

Pending Senate confirmation, appointed to the Judicial Compensation Commission for a term to expire February 1, 2019, Linda B. Russell of League City (Ms. Russell is being reappointed).

Pending Senate confirmation, appointed to the Commission on Human Rights for a term to expire February 1, 2015, Sharon Breckenridge Thomas of San Antonio. Ms. Thomas is replacing Travis Morris of Pearland who resigned.

Pending Senate confirmation, appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2019, Jennifer B. Clark of Iola (replacing Kathleen Hill of Hutto whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2019, Amanda J. Ellis of Austin (replacing Judith Chambers of Austin whose term expired).

Pending Senate confirmation, appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2019, Todd M. Novosad of Austin (Mr. Novosad is being reappointed).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Rebecca Bradford of Corpus Christi (Ms. Bradford is being reappointed).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Dane Bruun of Corpus Christi (replacing Dan Leyendecker of Corpus Christi whose term expired).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Lynn Haueter of Corpus Christi (replacing Judith Creveling of Corpus Christi whose term expired).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Joe C.

McMillian of Dilley (replacing William Dillard of Uvalde whose term expired).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, David E. Purser of Karnes City (replacing Scott Petty of Hondo whose term expired).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Armandina "Dina" Ramirez of Karnes City (replacing Joe Cantu of Pipe Creek whose term expired).

Pending Senate confirmation, appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2019, Emily Stroup of San Antonio (replacing Robert Dullnig of San Antonio whose term expired).

Pending Senate confirmation, appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2019, Walter "Ted" Nelson of The Woodlands (replacing Joe Bob McCart of Amarillo whose term expired).

Pending Senate confirmation, appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2019, Stephen D. "Doug" Roberts of Austin (replacing Kathleen Owen of Pipe Creek whose term expired).

Pending Senate confirmation, appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2019, C. Clark Welder of Beeville (replacing Mona Bailey of North Richland Hills whose term expired).

Rick Perry, Governor

TRD-201302314



#### Proclamation 41-3325

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that the severe flooding that occurred on May 25-27, 2013, has caused a disaster in Bexar County, in the State of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of June, 2013.

Rick Perry, Governor

TRD-201302419





# THE ATTORNEY GENERAL

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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>.)

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Requests for Opinions

**RQ-1131-GA**

**Requestor:**

The Honorable Micheal B. Murray  
District Attorney, 35th Judicial District  
200 South Broadway, Courthouse  
Brownwood, Texas 76801

Re: Whether a justice of the peace may serve as a court-appointed investigator for an indigent defendant in a felony case (RQ-1131-GA)

**Briefs requested by June 24, 2013**

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

TRD-201302413  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: June 12, 2013



Opinions

**Opinion No. GA-1008**

Ms. Mari Robinson, J.D.  
Executive Director

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768-2018

Re: Whether the Texas Medical Board may allow its investigators who hold a concealed handgun license to carry a concealed handgun while on duty without subjecting the Board to liability (RQ-1104-GA)

**S U M M A R Y**

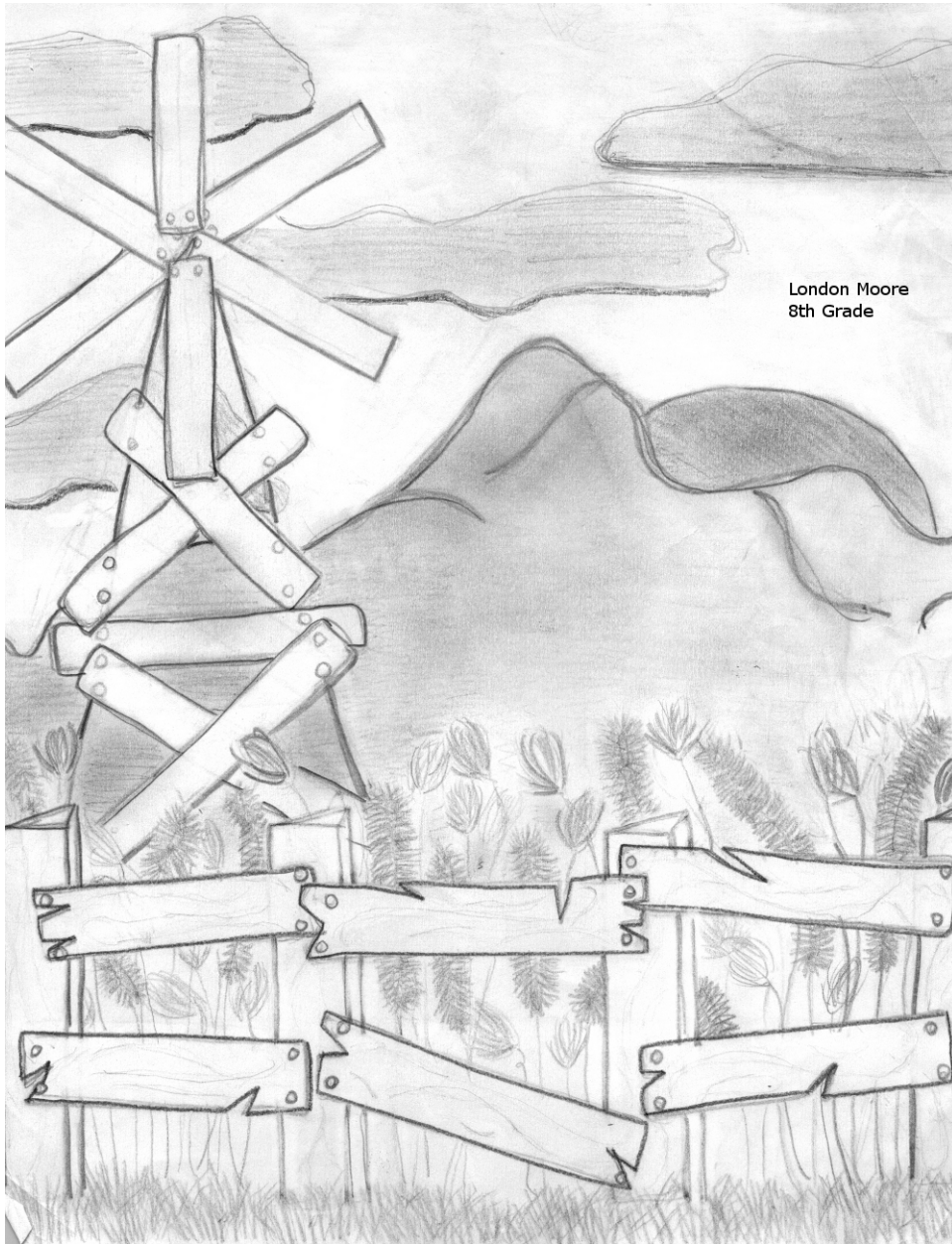
Texas Law does not prohibit the Texas Medical Board from allowing its investigators who are not commissioned as peace officers to carry a concealed handgun pursuant to the concealed handgun law while the investigators are on duty.

Adopting a concealed handgun policy that is consistent with state law would not waive the Texas Medical Board's immunity for its own actions of a legislative character. However, we cannot predict whether a court would construe section 411.208 of the Government Code as granting a state employer immunity for the negligent use of a handgun by an employee who holds a concealed handgun license.

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

TRD-201302433  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: June 12, 2013





# 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 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §20.1

The Texas Ethics Commission proposes an amendment to §20.1(13), concerning the definition of political advertising for purposes of Title 15 of the Election Code. The proposal amends §20.1(13)(B) by including in the definition of political advertising mass e-mails involving an expenditure of funds. It is the opinion of the Texas Ethics Commission that these types of communications should be regulated like other types of political advertising.

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

Mr. Reisman has also determined that for each year of the first five years the amendment is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The amendment is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment affects the Election Code, Title 15, §251.001(16).

###### §20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (re-

lating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Campaign communication--The term does not include a communication made by e-mail.

(2) Campaign treasurer--Either the individual appointed by a candidate to be the campaign treasurer, or the individual responsible for filing campaign finance reports of a political committee under Texas law or the law of any other state.

(3) Contribution--The term does not include a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor.

(4) Corporation--The term does not include professional corporations or professional associations.

(5) Direct campaign expenditure--A campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if:

(A) it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or

(B) it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure.

(6) Election cycle--A single election and any related primary or runoff election.

(7) Identified measure--A question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

(8) In-kind contribution--A contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure.

(9) Non-political expenditure--An expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure.

(10) Opposed candidate--A candidate who has an opponent whose name is to appear on the ballot. The name of a write-in candidate does not appear on the ballot.

(11) Out-of-state political committee--A political committee that makes political expenditures outside Texas and in the 12 months immediately preceding the making of a political expenditure

by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80% or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Section 20.13 of this title (relating to Out-of-State Committees) explains the practical application of this definition.

(12) Pledge--A contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check.

(13) Political advertising--[:]

(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(i) is published in a newspaper, magazine, or other periodical in return for consideration;

(ii) is broadcast by radio or television in return for consideration;

(iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or

(iv) appears on an Internet website.

(B) The term does not include an individual [a] communication made by e-mail but does include mass e-mails involving an expenditure of funds.

(14) Political committee--Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under Election Code, Title 15 (concerning Regulating Political Funds and Campaigns), who make reportable expenditures for a joint activity such as a fundraiser or an advertisement.

(15) Political subdivision--A county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

(16) Report--Any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice.

(17) Special pre-election report--A shorthand term for a report filed in accordance with the requirements of §§20.221, 20.333, or 20.435 of this title (relating to Special Pre-Election Report by Certain Candidates; Special Pre-Election Report by Certain Specific-Purpose Committees; Special Pre-Election Reports by Certain General-Purpose Committees) and §254.038 and §254.039 of the Election Code (relating to Special Report Near Election by Certain Candidates and Political Committees and Special Report Near Election by [By] Certain General-Purpose Committees).

(18) Specific-purpose committee--A political committee that does not meet the definition of general-purpose committee and that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(19) Unidentified measure--A question or proposal that is intended to be submitted in an election for an expression of the voters' will and that is not yet legally required to be submitted in an election, except that the term does not include the circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. The circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will is considered to be an identified measure.

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 June 7, 2013.

TRD-201302311

Natalia Ashley

Special Counsel

Texas Ethics Commission

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 463-5800



## CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

### 1 TAC §26.7

The Texas Ethics Commission proposes new §26.7, concerning use of the term "reelect" in political advertising as defined by Title 15 of the Election Code. The rule clarifies instances in which a person or candidate may use the term "reelect" in the event of redistricting.

David A. Reisman, Executive Director, 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 proposed section.

Mr. Reisman has also determined that for each year of the first five years the proposed rule is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the

proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The new rule is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule affects the Election Code, Title 15, §251.001(16) and §255.006.

§26.7. Use of the Term "Reelect" in Political Advertising.

A person or candidate may, in the event of redistricting, use the term "reelect" in a campaign for elective office only if the candidate is the elected incumbent of an office that represented any part of the new or renumbered district prior to the redistricting.

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 June 7, 2013.

TRD-201302312

Natalia Ashley

Special Counsel

Texas Ethics Commission

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 463-5800



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

##### 4 TAC §20.30, §20.31

The Texas Department of Agriculture (the department) proposes amendments to Chapter 20, Cotton Pest Control, Subchapter D, §20.30, concerning hostable cotton fees in commercial cotton, and §20.31, concerning hostable cotton fees in noncommercial cotton. The amendments are proposed to implement changes requested by the Grower Steering Committee for the Lower Rio Grande Valley (LRGV) Zone for the Texas Boll Weevil Eradication Foundation and recommended by the Cotton Producer Advisory Committee (CPAC) for the department's Pest Management Zone 1 (Zone 1).

The proposed amendments to §20.30 change weekly rates for the fee charged for failing to destroy commercial cotton prior to established dates in boll weevil quarantined areas, as established by §20.11 in conjunction with §§20.12 - 20.14 (relating to quarantine requirements) of this chapter. The proposed amendments to §20.31 change weekly rates for fees charged for failing

to destroy hostable noncommercial cotton prior to established dates in boll weevil quarantined areas. Currently only the LRGV Zone is classified as quarantined. All areas currently growing cotton in the LRGV are in Zone 1.

The proposed hostable commercial cotton fee rates and the proposed hostable noncommercial cotton fee rates are proposed based on consideration of a recommendation made by the Grower Steering Committee for the LRGV Zone and recommended at a recent meeting of the CPAC for Zone 1. The department believes that the proposed changes for boll weevil quarantined zones are scientifically based, supported by the affected producers, and will accelerate boll weevil eradication. Proposed amendments in §20.30 change the weekly rate for the hostable commercial cotton fee in quarantined areas from \$5.00 per acre per week or partial week to \$20 per acre for each week or partial week for each of the first 5 weeks of fee accumulation; the proposed amendments also change the hostable commercial cotton fee in quarantined areas for each week or partial week after week 5 of the fee from \$7.50 for each week or partial week to \$30 for each week or partial week.

For weeks that begin before the enforcement deadline for commercial cotton or end after the destruction deadline for commercial cotton, the proposed amendments to §20.31 change the weekly rate for the hostable noncommercial cotton fee in quarantined areas from \$5.00 per acre per week or partial week to \$20 per acre per week or partial week, for each of the first 5 weeks of hostable noncommercial cotton fee accumulation. For each week or partial week after the first 5 weeks of the fee, the proposed amendments to §20.31 change the fee in quarantined areas to \$30 per acre per week of hostable noncommercial cotton fee accumulation. For weeks that begin after the enforcement deadline for commercial cotton or end before the destruction deadline for commercial cotton, the hostable noncommercial cotton fee remains unchanged under the proposed rule as amended.

Dr. Awinash Bhatkar, coordinator for biosecurity and agriculture resource management, has determined that for the first five-year period the proposed revised sections are in effect, there will be no implication for state or local government as a result of enforcing or administering the sections, as amended, because, per Agriculture Code, §74.0032, the hostable commercial cotton fee and the hostable noncommercial cotton fee may be appropriated only for the purpose of treating hostable cotton or for other expenses related to boll weevil eradication.

Dr. Bhatkar also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be to protect the state's and Texas cotton producers' investment in boll weevil eradication and to accelerate eradication of the boll weevil in Texas. There will be a fiscal impact on small or microbusinesses and individual cotton producers required to comply with §20.30 and §20.31, as amended. The actual cost of compliance to businesses or individual cotton growers is not known because of the unpredictability of how much hostable noncommercial cotton will come up in a given year, as well as the broad range of control options for control of noncommercial cotton; such options include physical destruction of hostable noncommercial cotton plants, chemical herbicides and cultivation practices.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than

30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §20.30 and §20.31 are proposed under the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; §74.032, which provides the department with the authority to establish and collect a hostable cotton fee on hostable volunteer or other noncommercial cotton which remains past the stalk destruction deadline set for the applicable pest management zone and to adopt rules to implement §74.032; and §74.119, which provides the department with the authority to adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones, including the establishment of a volunteer cotton fee to be paid to the department on hostable or volunteer cotton which has not been destroyed after notice by the department.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

*§20.30. Hostable Cotton in Commercial Cotton Fields.*

(a) Hostable Commercial Cotton Fee. Hostable unharvested cotton, hostable harvested cotton, or hostable volunteer or other hostable noncommercial cotton, including regrowth, found in a commercial cotton field after the cotton destruction deadline or any extension of the destruction deadline, may be subject to a hostable commercial cotton fee.

(b) Grace period. Upon discovery of hostable volunteer or other noncommercial cotton in a commercial cotton field, the department will give notice to the grower or landowner to destroy the hostable volunteer or hostable regrowth cotton within a 7-day grace period after the date notice is given. If weather conditions prevent destruction of the cotton within the 7-day grace period, the grower or landowner may, before the end of the 7-day grace period submit a request for an extension of the grace period.

(c) Fee Calculation. In a boll weevil quarantined area, as established by §20.11 of this chapter (relating to Quarantined Areas) in conjunction with §§20.12 - 20.14 of this chapter (relating to Suppressed, Functionally Eradicated and Eradicated Areas):

(1) For fields containing planted stalks that remain undestroyed, the hostable commercial cotton fee is calculated at:

(A) \$20.00 per acre for each full or partial week through the end of the fifth week after the destruction deadline or any approved extension of the destruction deadline; and

(B) \$30.00 per acre for each full or partial week beginning with the sixth week after the date of the destruction deadline or any approved extension of the destruction deadline.

(2) For fields that contain only hostable volunteer or hostable regrowth cotton, the hostable commercial cotton fee is calculated at:

(A) \$5.00 per acre for each full or partial week through the end of the fifth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection; and

(B) \$7.50 per acre for each full or partial week beginning with the sixth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection.

(d) In a boll weevil suppressed, functionally eradicated or eradicated area, as established by §§20.12 - 20.14 of this chapter in conjunction with §20.11 of this chapter:

(1) [(2)] For fields containing planted stalks that remain undestroyed, the hostable commercial cotton fee is calculated at:

(A) \$5.00 per acre for each full or partial week through the end of the fifth week after the destruction deadline or any approved extension of the destruction deadline; and

(B) \$7.50 per acre for each full or partial week beginning with the sixth week after the date of the destruction deadline or any approved extension of the destruction deadline.

(2) [(3)] For fields that contain only hostable volunteer or hostable regrowth cotton, the hostable commercial cotton fee is calculated at:

(A) \$5.00 per acre for each full or partial week through the end of the fifth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection [section]; and

(B) \$7.50 per acre for each full or partial week beginning with the sixth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection [section].

(3) [(4)] A hostable commercial cotton fee must be received on or before the 45th day after the date the department gives notice to the cotton grower that the fee is due.

(4) [(5)] Notice is given under this section on the date:

(A) the notice is personally delivered to the person owing the fee or to any agent, of the person owing the fee, who typically receives business correspondence on behalf of that person; or

(B) if mailed, three days after the date the notice is mailed to the person owing the fee or to any agent, of the person owing the fee, who typically receives business correspondence on behalf of that person.

(5) [(6)] An administrative penalty for each day payment is delinquent may be assessed against a person who fails to pay the fee required by this section in a timely manner.

(6) [(7)] In addition to administrative penalties, the department is also authorized to destroy, or contract for the destruction of, any hostable cotton for which the applicable fee has not been paid. If it becomes necessary for the department to contract with someone to destroy the hostable cotton, the cotton grower must reimburse the department for 150% of the actual costs required for destruction. If a cotton grower does not reimburse the department within 30 days after the date the department or contractor completes destruction or the date the department issues a bill requesting payment, whichever is later, the department may place a lien against the property on which the hostable cotton was located.

*§20.31. Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields.*

(a) - (c) (No change.)

(d) Hostable Noncommercial Cotton Fee. If hostable volunteer or other hostable noncommercial cotton in a crop field, or other location that is not a commercial cotton field, is not destroyed on or before the 14th day after notice is given or the expiration of an approved extended period, the grower or landowner shall pay a hostable noncommercial cotton fee [of \$5.00 per acre] for each full or partial week until the cotton is destroyed.

(1) (No change.)

(2) Prior to the established destruction deadline listed in §20.22 of this title (relating to Stalk Destruction Requirements) for the applicable Pest Management Zone, the total fee per acre shall not exceed the per acre assessment for boll weevil eradication that would be applicable if the location were a commercial cotton field. If hostable noncommercial cotton is present after the date of the destruction deadline or any approved extension of the destruction deadline, the grower or landowner shall pay a hostable noncommercial cotton fee [of \$5.00 per acre] for each full or partial week that shall be in addition to any fees accrued prior to the destruction deadline.

(3) (No change.)

(4) If the volunteer or other noncommercial cotton is in a boll weevil quarantined area, the hostable noncommercial cotton fee shall be calculated on the basis of \$5.00 per acre for each full or partial week after the end of the 14-day grace period, if the week begins after the enforcement deadline for commercial cotton or ends before the destruction deadline for commercial cotton found at §20.22 of this chapter; otherwise, the following shall apply:

(A) \$20.00 per acre for each full or partial week through the end of the fifth week after the end of the 14-day grace period; and

(B) \$30.00 per acre for each full or partial week beginning with the sixth week after the end of the 7-day grace period.

(5) If the volunteer or other noncommercial cotton is in a boll weevil suppressed area, the hostable noncommercial cotton fee shall be calculated on the basis of \$5.00 per acre for each full or partial week after the end of the 14-day grace period.

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 7, 2013.

TRD-201302310

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 21, 2013

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



## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.1, §101.5

The State Board of Dental Examiners (Board) proposes amendments to §101.1 and §101.5, concerning the Board's ability to collect information regarding dental practices, to implement requirements of HB 3201 (83rd Legislation, Regular Session). These proposed amendments allow the Board to collect certain information from its licensees and other listed entities to report to the Legislature as required by HB 3201.

Julie Hildebrand, Acting Executive Director, has determined that for the first five-year period the amendments are in effect, there

will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Hildebrand has also determined that for the first five-year period the amendments are in effect, the public benefit anticipated as a result of the administering the amendments will be to provide the Board with additional information necessary to enforce the Dental Practice Act. There is no cost to persons or small businesses who are required to comply with the proposed amendments. There is no foreseeable impact on employment in any regional area where the proposed amendments are enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rules are published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed amendments.

#### §101.1. General Qualifications for Licensure.

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

(1) Is at least 21 years of age;

(2) Is of good moral character and professional fitness, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license in any jurisdiction, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(3) Has successfully completed a current course in basic life support;

(4) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(5) Has paid all application, examination and licensing fees required by the Dental Practice Act and Board rules; and

(6) Has submitted fingerprints for the retrieval of criminal history record information.

(d) In conjunction with the application, the applicant must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act.

(e) [~~(d)~~] Applications for licensure must be delivered to the office of the Board.

(f) [~~(e)~~] An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board

along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant with an explanation of additional documentation or information needed.

(g) [(f)] Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

§101.5. *Staggered Dental Registrations.*

(a) The Board, pursuant to the Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental license registration periods followed by annual registrations (i.e., renewals).

(b) The initial, staggered dental license registration periods will range from 6 months to 17 months. The length of the initial license registration period will be according to the licensee's birth month.

(c) Prior to the expiration date of the initial dental license registration period, a license renewal notice will be mailed to all dental licensees who have that expiration date.

(d) A license registration expired for one year or more may not be renewed.

(e) An initial license expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

(f) In conjunction with the license renewal, the licensee must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act.

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

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302328

Julie Hildebrand

Acting Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 475-0989



## CHAPTER 102. FEES

### 22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule, to implement requirements of SB 1 and HB 3201 (83rd Legislature, Regular Session). This proposed amendment will show the increase in fees as required and developed through SB 1 and HB 3201.

Julie Hildebrand, Acting Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Hildebrand has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to provide funding for the administrative functions of the Board. Ms. Hildebrand has determined that for the first five-year period the proposed rule is

in effect, costs to persons or small businesses who are required to comply with the rule is no more than the relevant fees listed in the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed amendments may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed amendment.

§102.1. *Fee Schedule.*

The Board has established the following reasonable and necessary fees for the administration of its functions:

Figure: 22 TAC §102.1

[(a) Dentists]

[(1) Application for licensure by examination:]

[(A) Initial application/examination--\$200; and]

[(B) Initial assessment by the Texas Legislature for deposit to the General Revenue Fund--\$200.]

[(2) Application for licensure by credentials--\$2,500]

[(3) Application for temporary licensure by credentials--\$700]

[(4) Annual registration renewal:]

[(A) Annual registration--\$141;]

[(B) Annual peer assistance--\$9; and,]

[(C) Annual assessment by Texas Legislature for deposit to the General Revenue Fund--\$200.]

[(5) Duplicate license--\$25]

[(6) Duplicate renewal certificate--\$25]

[(7) Reactivate a retired license--\$75]

[(8) Sedation/Anesthesia Permit Application:]

[(A) Initial application--\$28.75;]

[(B) Annual renewal--\$5.]

[(b) Dental Hygienists]

[(1) Application for licensure by examination--\$100]

[(2) Application for licensure by credentials--\$525]

[(3) Application for temporary licensure by credentials--\$200]

[(4) Annual registration renewal:]

[(A) Annual registration--\$87; and,]

[(B) Annual peer assistance--\$2.]

[(5) Duplicate license--\$25]

[(6) Duplicate renewal certificate--\$25]



- ~~[(7) Reactivate a retired license--\$75]~~
- ~~[(e) Dental Assistants]~~
  - ~~[(1) Dental assistant registration:]~~
    - ~~[(A) Initial application--\$30]~~
    - ~~[(B) Annual renewal--\$27]~~
  - ~~[(2) Pit and fissure sealant certification:]~~
    - ~~[(A) Initial application--\$25.]~~
    - ~~[(B) Annual renewal--\$15.]~~
- ~~[(d) Dental Laboratories]~~
  - ~~[(1) Initial application--\$105]~~
  - ~~[(2) Annual registration renewal:]~~
    - ~~[(A) Annual registration--\$111; and,]~~
    - ~~[(B) Annual e-pay service fee--\$3.]~~
- ~~[(e) Mobile Dental Facilities or Portable Dental Units]~~
  - ~~[(1) Initial application--\$100]~~
  - ~~[(2) Annual renewal--\$50]~~
- ~~[(f) Application for dental intern or resident exception tracking (identification) number--\$50]~~
- ~~[(g) Faculty]~~
  - ~~[(1) Dentist faculty registration:]~~
    - ~~[(A) Initial application--\$100]~~
    - ~~[(B) Annual renewal--\$86]~~
    - ~~[(C) Peer assistance--\$9]~~
  - ~~[(2) Dental hygienist faculty registration:]~~
    - ~~[(A) Initial application--\$100]~~
    - ~~[(B) Annual renewal--\$76]~~
    - ~~[(C) Peer assistance--\$2]~~

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 June 10, 2013.  
 TRD-201302326  
 Julie Hildebrand  
 Acting Executive Director  
 State Board of Dental Examiners  
 Proposed date of adoption: July 21, 2013  
 For further information, please call: (512) 475-0989

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CHAPTER 108. PROFESSIONAL CONDUCT  
 SUBCHAPTER F. CONTRACTUAL AGREEMENTS

**22 TAC §108.73**

The State Board of Dental Examiners (Board) proposes new §108.73, concerning the Board's ability to collect information regarding dental practices, to implement requirements of HB 3201 (83rd Legislation, Regular Session). This new rule allows the

Board to collect certain information from its licensees and other listed entities to report to the Legislature as required by HB 3201.

Julie Hildebrand, Acting Executive Director, has determined that for the first five-year period the new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Hildebrand has also determined that for the first five-year period the new rule is in effect, the public benefit anticipated as a result of the administering the new rule will be to provide the Board with additional information necessary to enforce the Dental Practice Act. There is no cost to persons or small businesses who are required to comply with the proposed new rule. There is no foreseeable impact on employment in any regional area where the proposed new rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed new rule.

§108.73. Dental Service Organizations.

Upon written request by the Board, a dental service organization, as defined by §254.019(c) of the Dental Practice Act, shall provide to the Board the address of the locations where the organization provides dental services in this state and the name of each dentist providing dental services at each location.

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

Filed with the Office of the Secretary of State on June 10, 2013.  
 TRD-201302327  
 Julie Hildebrand  
 Acting Executive Director  
 State Board of Dental Examiners  
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 For further information, please call: (512) 475-0989

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

**22 TAC §161.3**

The Texas Medical Board (board) proposes amendments to §161.3, concerning Organization and Structure.

The amendment prohibits board members from representing a board licensee or group of board licensees in any civil or criminal matter involving matters related to healthcare issues.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this

proposal will be to ensure that board members fulfill their duties as board members in carrying out the mission of the board.

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

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

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

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

§161.3. *Organization and Structure.*

(a) The board shall consist of 19 members appointed by the Governor with the advice and consent of the Senate.

(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven members who represent the public.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.

(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) Board member appearances.

(A) A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings in which proceeding a licensee of the board is a party. A board member may furnish a written statement for a licensee to use in such administrative proceedings only if:

(i) the board member sought and received in writing the prior approval of the board's executive committee;

(ii) the written statement of the board member used by a licensee presents only facts that the board member has personally witnessed and does not offer or provide any statement as to character of the licensee or characterization of the events witnessed; and

(iii) the written statement plainly states that the recitation of the witnessed facts is not an indication [øf] in any manner that the board concurs with, agrees to, or supports those facts or the board member in his or her action.

(C) A board member may not represent a Board licensee or group of Board licensees in any civil or criminal matter involving matters related to healthcare issues.

(12) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for

removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(g) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

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 June 7, 2013.

TRD-201302308

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 305-7016



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM**

##### **SUBCHAPTER A. PRIMARY HEALTH CARE SERVICES PROGRAM**

###### **25 TAC §§39.1 - 39.4, 39.6 - 39.9, 39.11**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§39.1 - 39.4, 39.6 - 39.9, and 39.11, concerning the provision of primary health care services in Texas.

###### **BACKGROUND AND PURPOSE**

Health and Safety Code, Chapter 31, authorizes the department to establish a program to provide primary health care services in Texas. The current Primary Health Care Services Program provides access to primary health care services for individuals with incomes at or below 150% of the Federal Poverty Level residing in Texas who are unable to access the same care through other funding sources or programs. The expanded Primary Health Care Services Program will emphasize primary and preventive care to women age 18 and above and will expand access to services by increasing the income eligibility to 200% of the Federal Poverty Level.

The amendments are necessary to implement an anticipated increased legislative appropriation in the 2014-2015 General Appropriations Bill, Senate Bill 1, 83rd Legislature, Regular Session, 2013.

###### **SECTION-BY-SECTION SUMMARY**

An amendment to §39.1(b) includes an emphasis on women's primary and preventive care services.

Section 39.2 is amended for consistency by removing the examples of services provided in the definitions of "other benefit" and "Primary Health Care Services."

Changes are made to §39.3 to remove redundancies in the criteria for determining unmet needs; this rule is also updated for consistency with §39.2.

An amendment to §39.4(a) removes language regarding the provision of services by the department to clarify that the department does not provide direct services. Language regarding eligible individuals receiving services close to their home is also removed, as ensuring geographic coverage is included in §39.3.

Section 39.6 is amended to reflect the income eligibility increase from individuals at or below 150% of the Federal Poverty Level to those at or below 200% Federal Poverty Level.

An amendment to §39.7 allows program recipients 30 days instead of 14 days to notify providers of changes in eligibility.

An amendment to §39.8 replaces the word "Act" with the name "Primary Health Care Services Program."

Amendments to §39.9 clarify that the department does not provide direct services and therefore contractors, not the department, may deny, modify, suspend, or terminate services if the recipient/applicant is no longer eligible or provided false or incomplete information.

An amendment to §39.11(c) references Health and Safety Code, Chapter 31, and the Primary Health Care Services Policy Manual regarding providers' reporting requirements for the purpose of consistency.

###### **FISCAL NOTE**

Jan Maberry, Program Manager, Primary Health Care Services Program, has determined that each year of the first five years that the sections are in effect, there will be no new fiscal implications to state or local governments as a result of administering the amendments as proposed.

###### **SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Ms. Maberry has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses participate in the Primary Health Care Services Program. Small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

###### **ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT**

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

###### **PUBLIC BENEFIT**

In addition, Ms. Maberry has also determined that for each year of the first five years that the sections are in effect, the public benefit anticipated as a result of the proposed amendments will be an increase in primary and preventive health care services to women age 18 and above. Also, contractors will have more clarity on program requirements.

## REGULATORY ANALYSIS

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

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed sections do 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, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Imelda M. Garcia, Community Health Services Section, Mail Code 1923, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to [chss@dshs.state.tx.us](mailto:chss@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §31.004, which requires the department to adopt rules necessary to administer the Primary Health Care Services Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Health and Safety Code, Chapter 31.

### §39.1. Introduction.

(a) (No change.)

(b) The Department of State Health Services seeks to fund local projects that emphasize primary and preventive services to women [utilize early intervention and prevention of health problems]. Access to appropriate levels of health care can reduce health expenditures, mortality, morbidity, and improve individual productivity, health status, and economic growth.

### §39.2. Definitions.

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

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

(7) Other benefit--A benefit, other than a benefit provided under the Act, to which an individual is entitled for payment of the costs of primary health care services, including:

(A) benefits available from:

(i) (No change.)

(ii) Title XVIII or Title XIX of the Social Security

Act; and

(iii) any other compulsory insurance program;

~~[(iii) the Veterans Administration;]~~

~~[(iv) the Civilian Health and Medical Program of the Uniformed Services; and]~~

~~[(v) workers compensation or any other compulsory employer's insurance program;]~~

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

(8) Primary Health Care Services [health care services]--May [which] include the following:

(A) (No change.)

(B) emergency medical services;

(C) (No change.)

(D) preventive health services[; including immunizations];

(E) (No change.)

(F) laboratory, x-ray, nuclear medicine, or other appropriate diagnostic services; and

(G) other services provided in Health and Safety Code, Chapter 31.

~~[(G) nutrition services;]~~

~~[(H) health screening;]~~

~~[(I) home health care;]~~

~~[(J) dental care;]~~

~~[(K) transportation;]~~

~~[(L) prescription drugs and devices and durable supplies;]~~

~~[(M) environmental health services;]~~

~~[(N) podiatry services; and]~~

~~[(O) social services.]~~

(9) - (14) (No change.)

### §39.3. General Program Requirements.

(a) Because budgetary limitations exist, all program providers shall offer at least the following priority services:

(1) (No change.)

(2) emergency medical services;

(3) (No change.)

(4) preventive health services[; including immunizations];

(5) - (6) (No change.)

(b) The department, through approved providers, shall provide for the delivery of primary health care services to those populations that demonstrate unmet needs due to the inaccessibility and/or unavailability of primary health care services. Unmet needs may be determined by, but are not limited to, the following criteria:

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

- (4) key health indicators; and
- ~~[(4) cultural factors affecting the health status;]~~
- ~~[(5) health problems; and]~~
- (5) ~~[(6)]~~ health resources available in the community.

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

§39.4. *Provision of Contracts for Primary Health Care Services.*

(a) Primary health care services will be delivered through a network of contractors ~~[providers, directly by the department, or by the department and providers in combination. Unless otherwise necessary, eligible individuals should receive services close to their home].~~

(b) - (f) (No change.)

§39.6. *Eligibility Requirements and Provision of Services to Recipients.*

(a) Individuals covered under the Primary Health Care Services Program ~~[Aet]~~ are those who are not eligible for other benefits. Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service may be eligible for other program services, and for prescription drugs not covered by Medicare, Part D.

(b) (No change.)

(c) In accordance with program policy, providers: ~~[In order for an individual to be eligible for primary health care services, the individual must:]~~

(1) be in financial need based on a family income that does not exceed 200% ~~[150%]~~ of the current Federal Poverty Level guidelines; and

(2) (No change.)

(d) - (h) (No change.)

§39.7. *Maintaining Eligibility.*

To maintain eligibility for program benefits, the recipient must continue to reside in Texas, be in financial need as defined by this subchapter ~~[these sections]~~, and inform the provider in writing or by telephone within 30 ~~[14]~~ days of changes in the following:

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

§39.8. *Coordination of Benefits.*

(a) An individual is not eligible to receive services delivered under the Primary Health Care Services Program ~~[Aet]~~ when the individual, or a person with a legal obligation to support the individual, is eligible for some other benefit that would pay for all or part of the services, unless coverage for those services has been denied.

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

§39.9. *Denial/Modification/Suspension/Termination of Services.*

The contractor ~~[department]~~ may deny, modify, suspend, or terminate services to an applicant or recipient after written notice ~~[and an opportunity for a fair hearing]~~ if:

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

§39.11. *Program Review.*

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

(c) The department will require providers to report information on service delivery as required by Health and Safety Code,

Chapter 31, and the Primary Health Care Services Policy Manual. ~~[to the department the following:]~~

~~[(1) demographic information on eligible individuals;]~~

~~[(2) the number of eligible individuals receiving services and the average cost per recipient;]~~

~~[(3) fiscal and financial management reports of expenditures;]~~

~~[(4) program accomplishments; and]~~

~~[(5) networking and coordination of services with other providers.]~~

~~[(d) The department may request other data and/or reports upon prior 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 June 7, 2013.

TRD-201302317

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 776-6972



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

#### SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

#### 30 TAC §336.1310

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes new §336.1310.

Background and Summary of the Factual Basis for the Proposed Rule

Texas Health and Safety Code (THSC), §401.245, requires the commission by rule to adopt and periodically revise party state compact waste disposal fees. Senate Bill (SB) 1504 allowed the executive director (ED) to set interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees.

On August 25, 2011, the ED set the interim disposal rates which will remain in effect until a final maximum disposal rate schedule is adopted by rule. On February 3, 2012, after a technical review of Waste Control Specialists' (WCS) low-level radioactive waste (LLRW) disposal rate application, the ED published the recommended rate schedule in the *Texas Register*. These recommended disposal rates were subject to a contested case

hearing if a party-state generator requested one. TCEQ received several hearing requests from party-state generators of LLRW and one hearing request from the licensee. Therefore, on May 21, 2012, TCEQ referred the rate application to the State Office of Administrative Hearings (SOAH). As part of the SOAH process, the TCEQ submitted a recommended disposal rate that differed slightly from the original interim disposal rates in that the Class A waste disposal rate was decreased from \$150 per cubic foot to \$100 per cubic foot. Subsequent to that referral, all parties withdrew from the rate case, and therefore the case was remanded to the ED.

Under §336.1309(g), the ED is required to initiate an expedited rulemaking to establish rates once the initial maximum disposal rates have been determined. This rulemaking would add §336.1310 setting out the maximum disposal rates.

#### Section Discussion

##### §336.1310, *Rate Schedule*

New §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW. Additionally, the disposal rates serve as the minimum rates that a licensee may charge to nonparty generators for disposal of LLRW.

##### Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would set out the maximum and minimum disposal rates that a licensee may charge generators of party-state and nonparty waste to dispose of LLRW. Disposal fees for LLRW are set to cover the cost of operating a disposal site facility, and the state has only one LLRW licensed disposal site at this time. The proposed rule complies with the provisions of SB 1504, 82nd Legislature to adopt and periodically revise compact waste disposal fees.

The licensee has already entered into six-year disposal contracts with various generators, and these generators would be required to pay the fees under their contract rates. The contract rates were based on the ED's interim disposal rates. The proposed rule would adopt rates equal to the interim disposal rates except for the rate charged for Class A LLRW disposal. Instead of the \$150 per cubic foot set under the interim rate, the proposed Class A disposal rate would be \$100 per cubic foot. The lower rate would be the base rate that would apply to generators who contract with the licensee after the proposed rule is adopted. Using the parameters of the proposed rates, the licensee would decide on the actual rates to be charged to a generator under future contracts. Contracted rates are the governing factors for state assessed fees charged on gross receipts received from the disposal of LLRW. The agency does not receive projections of future disposal volumes or gross receipts from the licensee. Current estimates of fee revenue are based on the first year of operations. The volume of Class A waste in Fiscal Year 2012 was from party-state generators and totaled 2,734.81 cubic feet. The volume of waste and, therefore, gross receipts are expected to increase in future years. Once a longer trend develops, more accurate information will be available to estimate future revenue streams.

The proposed rule is not expected to have a significant fiscal impact on the agency or the state since the rates under the proposed rule did not change for Class B and C waste which, after one year in operation, appear to be the most common waste types disposed of at the site. Any increase or decrease in fee revenue deposited in Account 88 - Low Level Radioactive Waste and Fund 001 - General Revenue will depend on actual rates charged by the licensee, and the agency does not expect rate changes for Class A waste to significantly change the amount of revenue collected.

Under current law, Andrews County receives revenue based on the licensee contracted rates. The proposed rule is not expected to have a significant effect on the amount of revenue received by Andrews County. The significance of the proposed rate change for Class A waste would depend on the contract rates established by the licensee and the volume of Class A waste compared to the volume from other classes of waste. Although the maximum rate for party state Class A waste would be \$50 per cubic foot less than the current interim rate, the licensee could charge nonparty state generators more than the minimum proposed rate so that revenue from these generators exceeds the \$50 difference between the proposed fee and the interim fee.

State agencies and other units of local government that are generators of Class A waste would pay a \$50 per cubic foot less than party-state generators operating under existing contracts. The fiscal impact of the proposed rate would depend on the rate set by the licensee and the quantity of Class A waste. Governmental entities that generate Class B and C waste would experience no fiscal implications since the rates for Class B and C waste are the same as the interim rates.

##### Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be in compliance with state law and clarity concerning maximum disposal rates for party-state generators and minimum disposal rates for nonparty state generators of LLRW.

The proposed rule will not have a fiscal impact on individuals and large businesses that have already contracted with the licensee for waste disposal. Their rates will remain the same for the terms of the contracts. For individual and large business generators who have not contracted with the licensee, the proposed rule is not expected to have a significant fiscal impact since most of the rates under the proposed rule are the same as the interim rates previously set by the ED. However, generators of Class A waste that do not already have contracts with the licensee and that are party-state members would see a maximum rate of \$100 per cubic foot for Class A waste instead of \$150 per cubic foot. Nonparty members would see the same rate as a minimum rate with the same potential savings. Since the licensee can charge rates that are below the maximum and above the minimum and because the agency does not receive estimates of future gross receipts from the licensee, the agency cannot provide a more accurate estimate of total fiscal impact on individuals and large businesses at this time. The significance of any savings will depend on the rates charged by the licensee and the volume of the different classes of waste disposed of by the generator.

##### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on

a large business. The proposed rule sets LLRW disposal rates equal to that set by the ED's interim rates except for a Class A rate that is \$50 less per cubic foot. The amount of any savings for disposal of Class A waste would depend on the rate set by the licensee.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rulemaking to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 1504, which require the commission by rule to adopt and periodically revise party-state compact waste disposal fees.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed new rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed new rule is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements, because

the proposed rule: 1) does not exceed a standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rule; and 4) is not an adoption of a rule solely under the general powers of the commission as the proposed rule is required by SB 1504.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The proposed rulemaking creates new §336.1310. The commission's analysis revealed that creating this rule would achieve consistency with Texas Health and Safety Code, §401.245 as amended in 2011 by SB 1504. New §336.1310 would set out the maximum disposal rates that a licensee may charge party-state generators for disposal of LLRW.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by establishing by rule the maximum disposal rates that a licensee may charge a party-state generator, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 19, 2013, at 10:00 a.m., Building E, Room 254S, located at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open

discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-017-336-WS. The comment period closes July 22, 2013. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Tonya Baer, Radioactive Materials Division, (512) 239-1233.

#### Statutory Authority

The new rule is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed new rule is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The proposed new rule implements THSC, §401.245, relating to Party State Compact Waste Disposal Fees.

#### §336.1310. Rate Schedule.

Fees charged for disposal of party-state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

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 June 7, 2013.

TRD-201302316

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 239-0779



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

### 34 TAC §25.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.1, concerning service eligible for TRS membership, in Chapter 25, Subchapter A of TRS' rules. Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. Section 25.1 establishes the standards for membership eligibility, which generally is employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions.

TRS recently adopted amendments to §25.1 to address how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining eligibility for TRS membership. The amendments establish the same ratio for converting semester hours or course credits to clock hours for the purpose of determining eligibility for membership as that used for the purpose of determining the number of hours worked by a retiree under the one-half time exception: two clock hours for every hour of instruction in the classroom or lab. After those amendments were adopted, staff received comments from some community college employers and adjunct faculty members who were concerned that the requirements under the Affordable Care Act to provide health benefits to employees who work 30 hours or more in conjunction with TRS' newly adopted 2-to-1 standard for converting instructional hours to clock hours could result in employers having to limit adjunct faculty to teaching fewer classes. Administrators were concerned that additional faculty would have to be hired and employees were concerned that their incomes would be reduced. TRS was asked to provide an exception to the minimum eligibility requirements for adjunct faculty members that would allow the individual to teach the equivalent of three 3-hour classes without becoming eligible for membership in TRS. The current rule proposal represents a compromise effort to provide relief to both affected employers and employees. The recently adopted amendments to §25.1 were published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3652) and were adopted with an expedited effective date of June 3, 2013 to ensure the current proposal can be considered and adopted by the start of the 2013 fall semester.

The current proposal would establish an eligibility requirement specifically for adjunct faculty and carve out a standard for membership eligibility for adjunct faculty that allows the employee to teach the equivalent of three 3-hour classes each semester without becoming membership-eligible. Under the current standard, teaching three 3-hour classes is the equivalent of working 18 clock hours ((3 x 3) x 2 = 18 clock hours). However because there is no full-time equivalent position for adjunct faculty, §25.1(e) established a 15-hour minimum threshold for membership eligibility. For adjunct faculty, the 15-hour minimum threshold limits the employee to teaching no more than two 3-hour classes to avoid membership eligibility and the benefits provided by the employer that are tied to TRS membership eligibility. The proposed amendments would effectively allow the employee to teach one additional 3-hour class without becoming eligible for membership in TRS.



The proposed amendments would also establish a definition for an adjunct faculty position that is lacking in the TRS rules. The definition will also aid in the consistent administration of the membership eligibility requirements for adjunct faculty.

After the latest adoption of amendments to §25.1, TRS staff received input from representatives of Texas Community College Teachers Association (TCCTA) and Texas Association of Community Colleges (TACC). Those associations confirmed that allowing adjunct faculty to teach the equivalent of three 3-hour classes without establishing eligibility for membership in TRS will avoid a conflict with the anticipated requirements under the Affordable Care Act for providing health benefits to employees of community colleges. Both groups indicated that they support the proposed amendments to §25.1.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.1 will be in effect, there will be no fiscal implications for state or local government. Mr. Welch anticipates minimal implications but cannot precisely estimate the aggregate fiscal implications for public education employers because it is not known how many employees will be subject to a change in status regarding TRS membership eligibility.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch has determined that the public benefit will be to clarify and simplify the determination of TRS membership eligibility by higher education employers for regular, full-time service and part-time or temporary employment.

Mr. Welch has determined that there will be no or minimal economic cost to entities or persons required to comply with the proposed rule. Because of the variable employment and reporting practices of individual employers, Mr. Welch cannot estimate how many employees will experience a change in status regarding eligibility for TRS membership and for the accrual of TRS benefits because of the amended rule or any related economic costs.

Mr. Welch has determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under Texas Government Code §2001.022. Mr. Welch has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Texas Government Code §2006.002.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice and the proposed rule in the *Texas Register*.

Statutory Authority: The amendments are proposed under Texas Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendments affect the following statutes: Texas Government Code §821.001(6), which defines "employee"; Texas Government Code §822.001, which states the membership requirement; §823.002, which addresses service creditable in a year; and Texas Government Code §825.403 addressing collection of member contributions.

§25.1. *Full-time Service.*

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

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in subsection (j) of this section regarding adjunct faculty, if [H] there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) - (i) (No change.)

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students.

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

Filed with the Office of the Secretary of State on June 7, 2013.

TRD-201302309

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 542-6438



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 7. TEXAS DIVISION OF EMERGENCY MANAGEMENT

##### SUBCHAPTER A. EMERGENCY

##### MANAGEMENT PROGRAM REQUIREMENTS

###### 37 TAC §7.3

The Texas Department of Public Safety (the department) proposes amendments to §7.3, concerning Notification Required. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect a current website address and update titles. The title of the chapter has also been updated to be consistent with the name of the division in Government Code, §418.005(2).

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anti-

pated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Es-tringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

#### §7.3. Notification Required.

The presiding officer of each political subdivision of the state shall notify the Texas ~~Governor's~~ Division of Emergency Management of the manner in which the political subdivision is providing or securing an emergency management program and the person designated to head that program. Notification should be made using form TDEM-147 (Emergency Management Director/Coordinator Notification) [~~DEM-147 (Emergency Management Director/Coordinator Appointment)~~], which is available from the division's website (<http://www.txdps.state.tx.us/internetForms/Forms/TDEM-147.pdf>) [~~web site (http://www.txdps.state.tx.us/dem/pages/index.htm)~~] and from its State and District Coordinators [~~Regional Liaison Officers~~] stationed around the State.

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 June 6, 2013.

TRD-201302289

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 424-5848

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## SUBCHAPTER B. EMERGENCY MANAGEMENT PLANNING AND PREPLANNING REQUIREMENTS

### 37 TAC §§7.11 - 7.13

The Texas Department of Public Safety (the department) proposes amendments to §§7.11 - 7.13, concerning Emergency Management Planning and Preplanning Requirements. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to reflect a current website address and update titles. The title of the chapter has also been updated to be consistent with the name of the division in Government Code, §418.005(2).

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Es-tringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

#### §7.11. State Plan Required.

The Texas Division of Emergency Management of the Texas Department of Public Safety shall prepare and maintain a state emergency management plan. This plan is on file at the division's office, 5805 North Lamar Blvd., Austin, Texas, and with each member agency of the Emergency Management Council. A copy of the plan is posted on the division's website (<http://www.txdps.state.tx.us/dem/downloadableforms.htm#stateplan>) [web site (<http://www.txdps.state.tx.us/dem/pages/index.htm>)].

§7.12. *Local Planning Required.*

Each local and interjurisdictional emergency management agency shall prepare, keep current, and distribute to appropriate officials a local or interjurisdictional emergency management plan that includes the minimum content specified by the Texas Division of Emergency Management in its local emergency planning standards and has been signed by the presiding officer(s) of the jurisdiction(s) for which it was prepared. Local and interjurisdictional plans shall be reviewed annually and must have been prepared or updated during the last five (5) years to be considered current. A copy of each plan and any changes to it will be provided to the division [Division].

§7.13. *Eligibility for Federal Incentive Programs Described.*

(a) The Texas Division of Emergency Management administers certain federal assistance programs authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, and other statutes. To participate in these programs, a city or county must meet, as a minimum, the [following] basic eligibility requirements of this subsection:

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

(b) (No change.)

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. RECOVERY AND REHABILITATION REQUIREMENTS

### 37 TAC §7.42, §7.43

The Texas Department of Public Safety (the department) proposes amendments to §7.42 and §7.43, concerning Recovery and Rehabilitation Requirements. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this subchapter was necessary to reflect a current website address and update titles and transmission methods. The title of the chapter has also been updated to be consistent with the name of the division in Government Code, §418.005(2).

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Esringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§7.42. *Written Request Required.*

Requests for recovery assistance and/or a state disaster declaration by the Governor must be made by the local chief elected official in writing to the Governor of Texas through the Texas Division of Emergency Management. The request must indicate that the disaster is of such magnitude that local resources are inadequate to deal with it and the affected locality cannot recover without state and/or federal assistance. Requests may [Request should] be transmitted to the division [Division] by facsimile or e-mail [e-mail].

§7.43. *Supporting Information for a Request for Assistance.*

The documents listed in this section must [following should] be attached to requests for assistance and/or for a state disaster declaration by the Governor.

(1) An estimate of the extent of damage sustained to public and private property, including homes and business and data on the number of people who are deceased, injured, or displaced. The Disaster [Damage] Summary Outline (form TDEM-93 [DEM-93]), available from the Texas Division of Emergency Management field staff and posted on the division's website (<http://www.txdps.state.tx.us/InternetForms/Forms/TDEM-93.pdf>) [web site (<http://www.txdps.state.tx.us/dem/pages/index.htm>)], should be used for this purpose.

(2) (No change.)

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

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 15. DRIVER LICENSE RULES

### SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

#### 37 TAC §15.142

The Texas Department of Public Safety (the department) proposes amendments to §15.142, concerning Agreement to Purchase Driver Record Information. The 81st Texas Legislature enacted House Bill 2730 which added Texas Transportation Code, §521.060, and the 82nd Texas Legislature enacted House Bill 2657, which renumbered §521.060 to §521.062, allowing the department to establish a driver record monitoring pilot program by rule for a period not to exceed one year. The amendments to this rule establish the department's intent to initiate a pilot monitoring program with up to 3 vendors in the insurance or insurance support industry. All requirements relating to privacy and the release of information are contained within the statute. If the department determines that the program will be recommended as a permanent program, a formal report will be prepared and submitted to the lieutenant governor, the speaker of the house of representatives and each member of the legislature in accordance with Texas Transportation Code, §521.062(m), prior to a request being submitted to the Public Safety Commission. This rule will then be modified to accommodate a permanent program.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for the first year the rule is in effect the public benefit anticipated as a result of the rule will be that the insurance industry can monitor more drivers and ensure increased safety on the roadways of Texas.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sec-

tor 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 risk to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Jennifer Hubbs, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.062(a), which authorizes the department to establish by rule a driver record monitoring pilot program.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.062, are affected by this proposal.

*§15.142. Agreement to Monitor Certain Records and Purchase Driver Record Information.*

(a) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information.

(1) The pilot for a driver record monitoring program will be limited to insurers and insurance support organizations and agreements will be made with a maximum of 3 participants.

(2) Fees for the driver record monitoring program will be set by contract.

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

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

Filed with the Office of the Secretary of State on June 6, 2013.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

#### 37 TAC §21.5, §21.9

The Texas Department of Public Safety (the department) proposes amendments to §21.5 and §21.9, concerning Equipment and Vehicle Safety Standards. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to update a title and correct typographical errors.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Major William Diggs, Texas Highway Patrol, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

*§21.5. Standards for Safety Chains.*

(a) (No change.)

(b) Exceptions.

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

(3) Does not apply to trailers, semitrailers, or house trailers~~], or drawn motor vehicles~~ which are equipped with safety chains installed by the original manufacturer ~~[manufacture]~~ before the effective date of this section, August 18, 1994.

(4) (No change.)

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

*§21.9. Slow-Moving Vehicle Emblem Standards.*

The American Society of Agricultural and Biological Engineers, Standard S276 and all amendments thereto, except visibility requirements and mounting requirements, is adopted by the department as the standard for slow-moving vehicle emblems used in Texas.

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 June 6, 2013.

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D. Phillip Adkins

General Counsel

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CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES  
SUBCHAPTER A. DEFINITIONS AND GENERAL CODIS PROVISIONS

**37 TAC §28.1, §28.7**

The Texas Department of Public Safety (the department) proposes amendments to §28.1 and §28.7, concerning Definitions and General CODIS Provisions. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to reflect current website, e-mail, and physical mailing addresses and to remove names of state agencies no longer in existence.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to D. Pat Johnson, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas

78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§28.1. *Chapter Definitions.*

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

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

(5) Criminal justice or law enforcement agency or agency--The Texas Department of Criminal Justice, [~~the Texas Youth Commission,~~] the Texas Juvenile Justice Department, [~~the Criminal Justice Policy Council,~~] a community supervision or probation department of this state, a criminal justice agency described by Government Code, §411.082, a city police department of this state, a county sheriff's department of this state, the department, another agency or subdivision of this state which is authorized to employ or commission peace officers, or the University of North Texas Health Science Center at Fort Worth.

(6) - (24) (No change.)

(25) ~~TJJD--The Texas Juvenile Justice Department [TYC--The Texas Youth Commission].~~

§28.7. *Communications.*

(a) Information about this chapter is available at the following website: <http://www.dps.texas.gov> [~~web site: http://www.txdps.state.tx.us~~].

(b) Except as provided by §28.109 of this title (relating to CODIS Communications) and §28.130 of this title (relating to DNA Communications), a forensic DNA laboratory or accredited laboratory shall communicate with the department or the director through the DPS Crime Laboratory Service at:

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

(3) e-mail address: [LABQA@dps.texas.gov](mailto:LABQA@dps.texas.gov) [~~LABQA@txdps.state.tx.us~~]; and

[(4) Post Office Box mailing address: Crime Laboratory Service, Attention Quality Assurance, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; and]

(4) [(5)] physical mailing address: [DPS Crime Laboratory, 5800 Guadalupe, Austin, Texas 78752](mailto:DPS Crime Laboratory, 5800 Guadalupe, Austin, Texas 78752) [~~Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas 78752-4422~~].

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

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D. Phillip Adkins

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## SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

### 37 TAC §28.24

The Texas Department of Public Safety (the department) proposes amendments to §28.24, concerning DNA Records Access. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect a current state agency name.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to D. Pat Johnson, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§28.24. *DNA Records Access.*

(a) - (c) (No change.)

(d) A file, fingerprint, or other identifying record submitted to the director by TJJD [FYC] or a local juvenile probation department under this chapter and relating to or identifying a juvenile shall be maintained separately from adult records. This subsection does not apply to storage or use of a DNA record in the DNA database.

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 June 6, 2013.

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## SUBCHAPTER D. CODIS RESPONSIBILITIES OF THE TEXAS JUVENILE JUSTICE DEPARTMENT

### 37 TAC §§28.61 - 28.67

The Texas Department of Public Safety (the department) proposes amendments to §§28.61 - 28.67, concerning CODIS Responsibilities of the Texas Juvenile Justice Department. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to change the name of the Texas Youth Commission (TYC) to the Texas Juvenile Justice Department (TJJD) pursuant to 82nd Texas Legislature, SB 653, which transferred the operations of TYC to TJJD on December 1, 2011.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to D. Pat Johnson, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

#### §28.61. *Sample Collection by TJJD* [FYC].

A juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with TJJD [FYC] shall provide one or more DNA samples taken by or at the request of the commission for the purpose of creating a DNA record.

#### §28.62. *TJJD* [FYC] Responsibilities.

TJJD [FYC] shall:

- (1) obtain samples from juveniles under this subchapter;
- (2) preserve each sample collected;
- (3) maintain a record of the collection of the sample; and
- (4) send the sample to the director for scientific analysis under Subchapter B of this chapter.

#### §28.63. *Sample Collection.*

(a) Time to collect. TJJD [FYC] shall obtain the sample from a juvenile during the initial examination or at another time determined by TJJD [FYC].

(b) Use of force. A TJJD [FYC] employee may use force against a juvenile required to provide a sample under this subchapter when and to the degree the employee reasonably believes the force is immediately necessary to collect the sample.

(c) Contracts. TJJD [FYC] may contract for phlebotomy services under this subchapter.

#### §28.64. *Collection of Fingerprint and Signature.*

(a) TJJD [FYC] shall collect and forward thumbprints with each DNA sample collected under this subchapter.

(b) The thumbs must be rolled to capture the entire print.

(c) TJJD [FYC] shall provide a legible signature of the person collecting the sample and, for identification purposes, should make reasonable efforts to collect a legible signature from the subject providing the sample.

#### §28.65. *Juvenile in Another Institution.*

If a juvenile is confined in another juvenile detention facility after adjudication and before admission to TJJD [FYC], and TJJD [FYC] determines that the juvenile is likely to be released before being admitted to TJJD [FYC], TJJD [FYC] shall cause a sample to be collected from the juvenile. The administrator of the other juvenile detention facility shall cooperate fully with TJJD [FYC] as necessary to allow TJJD [FYC] to perform its duties under this subchapter.

§28.66. *Advance Notice of Release.*

TJJD [TYC] shall notify the director that a juvenile subject to this subchapter is to be released from custody not earlier than the 120th day before the juvenile's release date.

§28.67. *Release without Required Sample.*

If a juvenile is released without first having submitted a required sample, TJJD [TYC] shall file an appropriate report with the director. The director may seek post-release compliance with this subchapter.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER G. CODIS USER LABORATORIES

### 37 TAC §28.109

The Texas Department of Public Safety (the department) proposes amendments to §28.109, concerning CODIS Communications. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect current website and e-mail addresses.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to D. Pat Johnson, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§28.109. *CODIS Communications.*

(a) Information about this subchapter is available at the following website: <http://www.dps.texas.gov/codis> [web site: <http://www.tx.dps.state.tx.us/eodis>].

(b) To inquire about information and administrative matters with, transmit to, or otherwise contact the department, director, or Crime Laboratory Service with respect to this subchapter:

(1) the telephone number is: (512) 424-2790 [424-2405 x3888];

(2) the fax number is: (512) 424-2386;

(3) the e-mail address is: [codislab@dps.texas.gov](mailto:codislab@dps.texas.gov) [[codislab@tx.dps.state.tx.us](mailto:codislab@tx.dps.state.tx.us)];

(4) the Post Office Box mailing address is: Crime Laboratory Service, Attention CODIS, MSC 0461, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-0461; and

(5) the physical mailing address is: Crime Laboratory Service, Attention CODIS, Texas Department of Public Safety, 5800 Guadalupe, Austin, Texas 78752 [~~MSC 0461, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422~~].

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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## SUBCHAPTER H. DATABASE RECORDS

### 37 TAC §28.128, §28.130

The Texas Department of Public Safety (the department) proposes amendments to §28.128 and §28.130, concerning database records. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules was necessary to reflect current website and e-mail addresses and update a state agency name.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.



Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to D. Pat Johnson, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039, are affected by this proposal.

§28.128. *Additional Sample.*

(a) - (c) (No change.)

(d) Profile does exist. If the director determines that a valid DNA record does exist for a defendant, the director:

(1) shall not solicit an additional DNA sample to be taken by TDCJ or TJJJD [TYC] without a written request from a felony prosecutor;

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

§28.130. *DNA Communications.*

(a) Information about this subchapter is available at the following website: <http://www.dps.texas.gov/codis> [web site: <http://www.tx.dps.state.tx.us/codis>].

(b) To inquire about information and administrative matters with, transmit to, or otherwise contact the department, director, or Crime Laboratory Service with respect to this subchapter:

(1) the telephone number is: (512) 424-2790 [424-2105 x3888];

(2) the fax number is: (512) 424-2386;

(3) the e-mail address is: [codislab@dps.texas.gov](mailto:codislab@dps.texas.gov) [[codislab@tx.dps.state.tx.us](mailto:codislab@tx.dps.state.tx.us)];

(4) the Post Office Box mailing address is: Crime Laboratory Service, Attention CODIS, MSC 0461, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-0461; and

(5) the physical mailing address is: Crime Laboratory Service, Attention CODIS, Texas Department of Public Safety, 5800 Guadalupe, Austin, Texas 78752 [MSC 0461, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422].

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 June 6, 2013.

TRD-201302298

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 424-5848



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 42. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§42.103, 42.212, 42.223, 42.404, and 42.641, concerning definitions; process for enrollment of an individual; periodic review and update of IPC and IPP; service delivery; and non-billable time and activities, in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to authorize a Home and Community Support Services Agency (HCSSA) DBMD Program provider to provide residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, and intervener services at the request of an individual while the individual is temporarily staying at a location outside the provider's contracted service delivery area but within the state of Texas. DADS currently does not authorize a provider to provide services outside of the area designated in the provider contract application. The proposed amendments give a provider the opportunity to help prevent a disruption in residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, and intervener services and help protect the individual's health and welfare while the individual is traveling or staying at a location other than the contracted service delivery area. The provider may accept or decline the individual's request for services outside the contracted service delivery area. A corresponding change to the rules governing licensure of an HCSSA in Chapter 97, Subchapter C, of this title is proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments limit the services to a period of no more than 60 consecutive days outside of the contracted service delivery area, after which the individual must return to the

provider's service delivery area and receive services in that area before again requesting services outside of the service delivery area. An individual who does not return at the end of the 60 days may transfer to a provider that has a contracted service delivery area in the new service delivery area to continue receiving services. The proposed amendments detail the process for requesting and receiving services outside of the contracted service delivery area, including informing the individual about the option to request services, limits on the delivery of services, the provider's option to accept or decline the request, record keeping, transfer to a different provider, and reimbursement.

The proposed amendments also address periodic review and update of an individual plan of care or individual program plan, documentation in an individual's record, and information the case manager must give the individual initially and annually, including the right to request a fair hearing and how to report abuse, neglect, and exploitation. The proposed amendments add definitions of new terms and update other terminology.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §42.103 adds definitions for "ICF/IID," "ICF/IID Program," "ID/RC Assessment," and "intellectual disability" and updates terminology used in the chapter. These terms are being updated to use preferred terms identified in Texas Government Code, Chapter 392, Person First Respectful Language Initiative.

The proposed amendment to §42.212 updates terms and specifies that a case manager must explain to an individual or legally authorized representative (LAR) during the initial home visit that the individual or LAR may request the provision of residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, and intervener services outside the provider's contracted service delivery area but within the state of Texas for no more than 60 consecutive days. The case manager also must inform the individual or LAR orally and in writing of procedures for reporting an allegation of abuse, neglect, and exploitation. The amendment requires the case manager to include a copy of the Documentation of Provider Choice form when submitting a request for an individual's enrollment to DADS.

The proposed amendment to §42.223 updates terms and specifies requirements of a case manager during an annual review, including the requirement to give an oral explanation to an individual or LAR regarding provision of residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, and intervener services outside the provider's contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days, the right to a fair hearing, complaint procedures, the consumer directed services option, and orally and in writing explain procedures for reporting an allegation of abuse, neglect, or exploitation. The case manager also must orally explain that the individual may request a service planning team meeting to discuss reasons the provider declined an out-of-area request. The amendment requires the service planning team to include a copy of the Documentation of Provider Choice form when submitting an annual renewal to DADS. The amendment clarifies in subsection (b)(2)(D) that the service planning team must submit listed documentation to DADS within 10 business days after the planning meeting but at least 30 days before the end of, rather than within, the current Individual Plan of Care (IPC) period.

The proposed amendment to §42.404 allows a program provider to accept or decline the request of an individual to receive residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, and intervener services outside the provider's contracted service delivery area and specifies documentation requirements. The amendment requires a program provider to inform the individual that the individual must transfer to another program provider to receive services outside of the service delivery area after 60 consecutive days or return to the program provider's contracted service delivery area and receive services before making another out-of-area service request. The provider must coordinate the individual's transfer. If the program provider declines a request for out-of-area services, the program provider must inform the individual of the reason and that the individual may request a team meeting to discuss the program provider's reasons for declining the request.

The proposed amendment to §42.641 adds that a program provider may not bill for expenses related to the delivery of residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, and intervener services, including costs for transportation or lodging, and for any services provided outside the area for more than 60 consecutive days.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new costs on an HCSSA that are not reimbursed by DADS.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the amendments is the opportunity for the HCSSA to provide residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, and intervener services while the individual is temporarily staying at a location outside the contracted service delivery area in which the individual resides and, therefore, to help protect the individual's health and welfare while the individual is traveling or staying at a location other than the contracted service delivery area.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development and Oversight. Written comments on the proposal may

be submitted to *Texas Register* Liaison, Legal Services-12R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us*. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R09" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §42.103

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §42.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's service planning team, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Activities of daily living (ADL)--Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, and assistance with self-administered medications.

(3) Adaptive aid--An item or service (including a medically necessary supply or device) that enables an individual to retain or increase the ability to:

(A) perform activities of daily living; or

(B) perceive, control, or communicate with the environment in which the individual lives.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and

social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R); or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(7) Assisted living facility (ALF)--An entity required to be licensed under the Texas Health and Safety Code (THSC), Chapter 247, Assisted Living Facilities.

(8) Behavioral support--Formerly referred to as "behavior communication," a service that provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life, with a particular emphasis on communication as it affects behavior.

(9) Business day--A day when DADS' administrative offices are open.

(10) Case management--Services that assist an individual to gain access to needed waiver and other state plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services.

(11) Case manager--A service provider who is responsible for the overall coordination and monitoring of DBMD Program services provided to an individual.

(12) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions) in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(13) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services to an individual participating in the CDS option.

(14) Chore services--Services needed to maintain a clean, sanitary, and safe environment in an individual's home.

(15) CMS--The Centers for Medicare and Medicaid Services.

(16) Competitive employment--Employment that pays an individual at or above the greater of:

(A) the applicable minimum wage; or

(B) the prevailing wage paid to individuals without disabilities performing the same or similar work.

(17) DADS--The Texas Department of Aging and Disability Services.

(18) DAHS (Day Activity and Health Services)--Services as defined in §98.2(17) of this title (relating to Definitions).

(19) DBMD Program--The Deaf Blind with Multiple Disabilities Waiver Program.

(20) DBMD Program specialist--Employee in DADS' state office who is the primary contact for the DBMD Program.

(21) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(22) Denial--A DADS' action that disallows:

(A) an individual's request for enrollment in the DBMD Program;

(B) a service requested on an IPC that was not authorized on the prior IPC; or

(C) a portion of the amount or level of a service requested on an IPC that was not authorized on the prior IPC.

(23) Dental treatment--A service that provides the following services, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us)):

(A) therapeutic, orthodontic, routine preventive, and emergency treatment; and

(B) sedation.

(24) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(25) DFPS--Department of Family and Protective Services.

(26) Dietary services--A therapy service that:

(A) assists an individual to meet basic or special therapeutic nutritional needs through the development of individual meal plans; and

(B) is provided by a person licensed in accordance with Texas Occupations Code, Chapter 701, Dietitians.

(27) Employment assistance--A service that assists an individual to obtain competitive, integrated employment.

(28) Financial management services--Services, as defined in §41.103 of this title provided to an individual who chooses to participate in the CDS option.

(29) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(30) Habilitation--Services that assist an individual in acquiring, retaining, and improving socialization and adaptive skills related to activities of daily living to enable the individual to live successfully in the community and participate in home and community life, including day habilitation and residential habilitation.

(31) HCSSA (Home and community support services agency)--An entity required to be licensed under THSC, Chapter 142, Home and Community Support Services.

(32) HHSC--Texas Health and Human Services Commission.

(33) ICF/IID--A facility in which ICF/IID Program services are provided.

(34) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(35) [(33)] ICF/MR [Program]--ICF/IID [Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition Program].

(36) [(34)] ICF/MR Program--ICF/IID Program [A facility in which ICF/MR Program services are provided].

(37) ID/RC Assessment (Intellectual Disability/Related Condition Assessment)--An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program.

(38) [(35)] Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(39) [(36)] Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(40) [(37)] Institutional services--Services provided in an ICF/IID [ICF/MR] or a nursing facility.

(41) [(38)] Integrated employment--Employment at a work site at which the individual routinely interacts with people without disabilities other than the individual's work site supervisor or service providers.

(42) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(43) [(39)] Intervener--A service provider who serves as a facilitator to involve an individual in home and community services

and activities, and who is classified as an "Intervener", "Intervener I", "Intervener II", or "Intervener III" in accordance with Texas Government Code, §531.0973.

(44) [(40)] IPC--Individual Plan of Care. A written plan developed by an individual's service planning team using person-directed planning that describes the type, amount, and estimated cost of each DBMD Program service to be provided to an individual.

(45) [(41)] IPP--Individual Program Plan. A written plan completed by an individual's case manager that describes goals and objectives for each DBMD Program service included on the individual's IPC.

(46) [(42)] IPC period--The effective period of an IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of service approved by DADS until the first calendar day of the same month of the effective date of service in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC.

(47) [(43)] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(48) [(44)] Licensed assisted living--A service provided in a residence licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) for four to six individuals.

(49) [(45)] Licensed home health assisted living--A service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence.

(50) [(46)] Licensed vocational nurse (LVN)--A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(51) [(47)] Medicaid--A program funded jointly by the states and the federal government that provides medical benefits to groups of low-income people, some who may have no medical insurance or inadequate medical insurance.

(52) [(48)] Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(53) [(49)] Mental retardation--Intellectual disability [Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age)].

(54) [(50)] Minor home modifications--Physical adaptation to an individual's residence necessary to address the individual's specific needs and enable the individual to function with greater independence or control the residence's environment.

(55) [(51)] MR/RC Assessment (Mental Retardation/Related Condition Assessment)--ID/RC Assessment [An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program].

(56) [(52)] Natural supports--Assistance to help sustain an individual's living in the community from persons, including family members and friends, that occurs naturally within the individual's environment.

(57) [(53)] Nursing--Treatments and health care procedures provided by a registered nurse or licensed vocational nurse that are:

(A) ordered by a physician; and

(B) provided in compliance with:

(i) Texas Occupations Code, Chapter 301, Nurses;

and

(ii) rules at Texas Board of Nursing at Texas Administrative Code (TAC), Title 22, Part 11, Texas Board of Nursing.

(58) [(54)] Occupational therapy--Services that:

(A) address physical, cognitive, psychosocial, sensory, and other aspects of performance to support an individual's engagement in everyday life activities that affect health, wellbeing, and quality of life; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 454, Occupational Therapists.

(59) [(55)] Orientation and mobility--Service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(60) [(56)] Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meet the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(61) [(57)] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(62) [(58)] Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(63) [(59)] Physical therapy--Services that:

(A) prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomic or physiologic origin; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 453, Physical Therapists.

(64) [(60)] Physician--As defined in §97.2(73) of this title (relating to Definitions), a person who holds a doctor of medicine or doctor of osteopathy degree and is currently licensed and practicing

medicine under the laws of the state of Texas, Oklahoma, New Mexico, Arkansas, or Louisiana.

(65) [(61)] Program provider--An entity that delivers DBMD Program services under a provider agreement.

(66) [(62)] Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to provide DBMD Program services.

(67) [(63)] Reduction--A DADS [DADS'] action taken as a result of a review of a revision or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(68) [(64)] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability [mental retardation] because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability [mental retardation], and requires treatment or services similar to those required for individuals with an intellectual disability [mental retardation];

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(69) [(65)] Request date--The date an individual or LAR requests the individual's name be added to the DBMD Program interest list.

(70) [(66)] Respite--Services provided on a short-term basis to an individual because of the absence or need for relief of an individual's unpaid caregiver.

(71) [(67)] RN (Registered nurse)--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(72) [(68)] Service planning team--A team comprising persons convened and facilitated by a DBMD Program case manager for the purpose of developing, reviewing, and revising an individual's IPC. The team includes:

(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) other persons whose inclusion is requested by the individual, LAR, or actively involved person;

(D) the program director or a registered nurse designated by the program provider; and

(E) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(73) [(69)] Service provider--A person who provides a direct DBMD Program service to an individual and who is an employee or contractor of:

(A) the program provider; or

(B) the individual or LAR, if the individual has chosen the CDS option.

(74) [(70)] Significantly subaverage general intellectual functioning--Consistent with Texas Health and Safety Code, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(75) [(71)] Speech, language, audiology therapy--Services that:

(A) address the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

(76) [(72)] Specialized nursing--Nursing provided to an individual who has a tracheostomy or is dependent on a ventilator.

(77) [(73)] SSA--Social Security Administration.

(78) [(74)] SSI--Supplemental Security Income.

(79) [(75)] Support consultation--A service, as defined in §41.103 of this title, that may be chosen by an individual who chooses to participate in the CDS option.

(80) [(76)] Supported employment--A service that assists an individual to sustain competitive, integrated employment.

(81) [(77)] TAC--Texas Administrative Code.

(82) [(78)] TAS (Transition Assistance Services)--Services provided to a Medicaid-eligible person receiving institutional services in Texas to assist with setting up a household when transitioning from institutional services into the DBMD Program.

(83) [(79)] TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(84) [(80)] Transfer--The movement of an individual from a DBMD Program provider or a CDSA to a different DBMD Program provider or CDSA.

(85) [(81)] Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

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 June 10, 2013.

TRD-201302352

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466



## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW DIVISION 2. ENROLLMENT PROCESS

### 40 TAC §42.212

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§42.212. *Process for Enrollment of an Individual.*

(a) A program provider, upon notification by DADS that an individual designated the program provider on a completed Documentation of Provider Choice form, must assign a case manager to the individual.

(b) The program provider must ensure that the assigned case manager contacts the individual or LAR within five business days after DADS notification to the program provider. During the initial contact, the case manager must:

- (1) verify that the individual resides in a county for which the program provider has a provider agreement;
- (2) determine if the individual is currently enrolled in Medicaid;
- (3) determine if the individual is currently enrolled in a Medicaid waiver program other than the DBMD Program, or another DADS-operated program described in the *DBMD Program Manual* other than DAHS; and
- (4) arrange with the individual and LAR for an initial face-to-face, in-home visit to occur as soon as possible but no later than 30 calendar days after DADS [~~DADS~~] notification to the program provider.

(c) During the initial face-to-face, in-home visit, the case manager must:

- (1) explain to the individual or LAR:
  - (A) the DBMD Program services and supports;

(B) the application and enrollment process described in this chapter;

(C) the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this chapter (relating to Individual's Right to a Fair Hearing);

(D) the mandatory participation requirements as described in §42.252 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(E) if the individual is enrolled in a Medicaid waiver program other than the DBMD Program or another DADS-operated program described in the *DBMD Program Manual* other than DAHS, that the individual or LAR must choose between the DBMD Program and the other program;

(F) the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;

(G) the CDS option as described in §42.217 of this chapter (relating to Consumer Directed Services (CDS) Option);

(H) if the individual is Medicaid-eligible and receiving institutional services, TAS as described in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services);

(I) the voter registration process, if the individual is 18 years of age or older; ~~and~~

(J) how to contact the program provider, the case manager, and the registered nurse;

(K) that the individual or LAR may request the provision of residential habilitation, case management, nursing, out-of-home respite in a camp, adaptive aids, or intervener services while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days; and

(L) orally and in writing, procedures for reporting an allegation of abuse, neglect, and exploitation.

(2) if possible:

(A) complete an adaptive behavior screening assessment, if appropriate, or ensure the adaptive behavior screening assessment is completed by an appropriate professional; and

(B) ensure a nursing assessment is completed by a registered nurse as described in the *DBMD Program Manual*;

(3) complete the ID/RC [~~MR/RC~~] Assessment form; and

(4) obtain the signature of the individual or LAR on:

(A) the Verification of Freedom of Choice form designating the individual's choice of DBMD Program services over enrollment in the ICF/IID [~~ICF/MR~~] Program; and

(B) DADS [~~DADS~~] Release of Information Consent form or a similar form developed by the program provider.

(d) If one or both of the assessments described in subsection (c)(2) of this section is not completed during the initial face-to-face, in-home visit, the case manager must ensure that the assessment is completed within 10 business days after the date of the initial face-to-face, in-home visit.

(e) If the individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, the case manager must:

(1) provide the individual or LAR with a list of TAS provider agencies; and

(2) using the TAS Assessment and Authorization form, assist the individual or LAR to:

- (A) identify the individual's essential needs for TAS; and
- (B) provide estimated amounts for TAS items and services; and

(3) retain the completed TAS Assessment and Authorization form in the individual's record for inclusion on the enrollment IPC as described in §42.214 of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(f) The program provider must:

(1) gather and maintain the information necessary to process the individual's request for enrollment in the DBMD Program using forms prescribed by DADS in the *DBMD Program Manual*;

(2) assist the individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit;

(3) document in the individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in DBMD Program services; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(g) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (f)(2)(B) of this section as a result of problems or barriers documented in subsection (f)(3) of this section but is making progress in collecting the documentation necessary for an application, the program provider may grant one or more 30 calendar day extensions.

(1) The program provider must ensure the case manager documents the rationale for an extension in the individual's record.

(2) The program provider must not issue an extension that will cause the period of Medicaid application preparation to exceed 12 months after the date of the case manager's initial face-to-face, in-home visit.

(3) The program provider must notify DADS [DADS'] DBMD program specialist in writing if the individual or LAR:

(A) fails to submit a completed Medicaid application to HHSC within 12 months after the date of the case manager's initial face-to-face, in-home visit; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(h) A program provider must ensure:

(1) the related conditions documented on the ID/RC [MR/RC] Assessment form for the individual are on DADS [DADS'] Approved Diagnostic Codes for Persons with Related Conditions list contained in the *DBMD Program Manual*;

(2) the ID/RC [MR/RC] Assessment is submitted to a physician for review; and

(3) the DADS [DADS'] Prior Authorization for Dental Services form is sent to a dentist as described in the *DBMD Program Manual* if the individual or LAR requests dental services other than an initial dental exam.

(i) After receiving the signed and dated ID/RC [MR/RC] Assessment from the physician establishing that the individual meets the eligibility criteria described in §42.201(3) and (4) of this chapter (relating to Eligibility Criteria), the case manager must:

(1) convene a service planning team meeting within 10 business days after receipt of the signed and dated ID/RC [MR/RC] Assessment; and

(2) if a DADS [DADS'] Prior Authorization for Dental Services form was submitted to a dentist as described in subsection (h)(3) of this section, ensure that the signed and completed form is available for the service planning team to review.

(j) During the service planning team meeting, the case manager must ensure:

(1) if the individual or LAR is requesting dental services other than an initial dental exam, the DADS [DADS'] Prior Authorization for Dental Services form has been signed by the dentist as described in §42.624(b) of this chapter (relating to Dental Treatment); and

(2) an enrollment IPC is developed as described in §42.214 of this chapter.

(k) Within ten business days after the service planning team meeting, the case manager must:

(1) complete an enrollment Individual Program Plan (IPP) as described in §42.215 of this chapter (relating to Development of Enrollment Individual Program Plan (IPP));

(2) provide a copy of the completed enrollment IPC and IPP to the individual or LAR;

(3) submit a request for enrollment to DADS for review as described in §42.216 of this chapter (relating to DADS Review of Request for Enrollment) that includes the following:

(A) a copy of the completed enrollment IPC;

(B) a copy of the ID/RC [MR/RC] Assessment form signed by a physician;

(C) a copy of the completed enrollment IPP;

(D) a copy of the adaptive behavior screening assessment;

(E) a copy of the Related Conditions Eligibility Screening Instrument form;

(F) a copy of the DBMD Summary of Services Delivered form (for pre-assessment services) with supporting documentation;

(G) a copy of the Verification of Freedom of Choice, Waiver Program form;

(H) a copy of the Non-Waiver Services form; ~~and~~

(I) a copy of the Documentation of Provider Choice form;

(J) [H] if applicable.



- (i) Prior Authorization for Dental Services form;
- (ii) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;
- (iii) Request for Authorization of IPP Over Cost Ceiling form;
- (iv) Specialized Nursing Certification form;
- (v) copies of letters of denial from non-waiver resources; and
- (vi) TAS Assessment and Authorization; and

(K) [(H)] if requested by DADS, additional assessments and supporting documentation related to the individual's diagnosis; and

(4) keep the original ID/RC [MR/RC] Assessment signed by a physician in the individual's record.

(l) Within five business days after receiving a written notice from DADS approving or denying the individual's request for enrollment, the program provider must notify the individual or LAR of DADS decision. If DADS:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services as described on the IPC; or

(2) denies the request for enrollment, the program provider must use the Denial of Application for DBMD Program form to notify the individual or LAR.

(m) The program provider must not provide DBMD Program services to an individual until notified by DADS that the individual's request for enrollment is approved. If a program provider provides DBMD Program services to an individual before the effective date of service approved by DADS, DADS does not reimburse the program provider for those services.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



### DIVISION 3. REVIEW

#### 40 TAC §42.223

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the

HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§42.223. *Periodic Review and Update of IPC and IPP.*

(a) Case manager's quarterly review.

(1) At least every 90 calendar days after the effective date of service of an individual's IPC as determined in accordance with §42.216(h) of this chapter (relating to DADS Review of Request for Enrollment), the case manager must meet face-to-face with the individual or LAR at a time and place acceptable to the individual or LAR to:

(A) review whether the DBMD Program services are being provided as outlined in the IPC and IPP;

(B) review the individual's progress toward achieving the goals and objectives described in the IPP for each DBMD Program service;

(C) determine if the services are meeting the individual's needs;

(D) determine if the individual's needs have changed; and

(E) review assessments, evaluations, and progress notes prepared by service providers since the previous quarterly review.

(2) The case manager must:

(A) document the results of the quarterly review in the individual's record using the IPP quarterly review form; and

(B) provide a copy of the completed IPP quarterly review form to the individual or LAR within 10 business days after the date of the quarterly review.

(3) If the case manager identifies needed changes in the individual's services during the quarterly review meeting, the case manager must:

(A) convene a service planning team meeting within five business days after the date of the quarterly review meeting to develop a revision IPC and IPP;

(B) ensure the revision IPC is signed and dated by each member of the service planning team; and

(C) within 10 business days after the date of the service planning meeting, submit to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by

DADS;

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

Ceiling form; (IV) Request for Authorization of IPP Over Cost form; (V) Specialized Nursing Certification form; and (VI) adaptive behavior screening assessment;

and (v) if requested by DADS, additional assessments and supporting documentation related to the individual's diagnosis.

(4) The case manager must ensure:

(A) a revision IPC meets the criteria described in §42.214(d)(1) - (6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(B) a revision IPP meets the criteria described in §42.215(2)(A) - (D) of this chapter (relating to Development and Enrollment Individual Program Plan (IPP)).

(5) DADS reviews the revision IPC in accordance with §42.221 of this chapter (relating to Utilization Review of IPC by DADS).

(6) The program provider must electronically access TMHP information to verify that services requested on a revision IPC have been authorized by DADS utilizing the Medicaid Eligibility Service Authorization Verification (MESAV).

(b) Annual review by service planning team.

(1) At least annually, but within 90 calendar days before the end of the IPC period, an individual's case manager must convene a service planning team to review the IPC and IPP.

(2) The service planning team must:

(A) develop a renewal IPC and IPP;

(B) complete a renewal ID/RC [MR/RC] Assessment in accordance with the *DBMD Program Manual*;

(C) ensure the renewal IPC is signed and dated by each member of the service planning team; and

(D) within 10 business days after the date of the service planning meeting but at least [within] 30 calendar days before the end of the current IPC period, submit to DADS:

(i) a copy of the completed renewal IPC;

(ii) a copy of the most recent IPC approved by DADS;

(iii) a copy of the ID/RC [MR/RC] Assessment;

(iv) a copy of the renewal IPP;

(v) a copy of the Related Conditions Eligibility Screening Instrument;

(vi) a copy of the Non-Waiver Services form; [and]

(vii) a copy of the Documentation of Provider Choice form; and

(viii) [(vii)] if applicable:

(I) an adaptive behavior screening assessment if the last assessment occurred five years prior or if significant changes have occurred;

(II) Specifications for Minor Home Modifications form;

(III) Prior Authorization for Dental Services form;

(IV) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(V) Request for Authorization of IPP Over Cost Ceiling form; and

(VI) Specialized Nursing Certification form; and

(ix) [(viii)] if requested by DADS, additional assessments and supporting documentation related to the individual's diagnosis.

(3) The case manager must:

(A) ensure the renewal IPC meets the criteria described in §42.214(d)(1) - (6) of this chapter;

(B) ensure the renewal IPP meets the criteria described in §42.215(2)(A) - (D) of this chapter;

(C) orally and in writing explain all DBMD Program services to the individual or LAR;

(D) explain to the individual, orally and in writing, the mandatory participation requirements of an individual as described in §42.252 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(E) orally explain to the individual or LAR that the individual may transfer to a different program provider; [and]

(F) give the individual or LAR the Documentation of Provider Choice form for [a written list of program providers serving] the DADS region in which the individual resides;[-]

(G) orally explain to the individual or LAR that they may request the provision of residential habilitation, nursing, case management, out-of-home respite in a camp, adaptive aids, or intervener services while the individual is temporarily staying at a location outside the program provider's contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days;

(H) orally explain to the individual or LAR the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this chapter (relating to Individual's Right to a Fair Hearing);

(I) explain to the individual or LAR the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;

(J) orally explain the CDS option to the individual or LAR as described in §42.217 of this chapter (relating to Consumer Directed Services (CDS) Option);

(K) explain orally and in writing to the individual or LAR procedures for reporting an allegation of abuse, neglect, and exploitation;

(L) have documentation that the oral explanation and information required under subparagraphs (C) - (K) of this paragraph were provided; and

(M) orally explain to the individual or LAR that the individual may request a service planning team meeting to discuss the reason the provider declined the request to provide services outside the program provider's contracted service delivery area.

(4) DADS reviews:

(A) the renewal IPC in accordance with §42.221 of this chapter; and

(B) the renewal ID/RC [MR/RC] Assessment in accordance with §42.222 of this chapter [title] (relating to Annual Review and Reinstatement of Lapsed Diagnostic Eligibility).

(5) The program provider must electronically access TMHP information to verify that services requested on a renewal IPC have been authorized by DADS utilizing the Medicaid Eligibility Service Authorization Verification (MESAV).

(c) Review and revision in an emergency.

(1) If a program provider delivers a DBMD Program service to an individual in an emergency to ensure the individual's health and welfare and the service is not on the IPC and IPP or exceeds the amount on the IPP, the program provider must:

(A) within five business days after providing the service, convene a service planning team meeting to review and revise the IPC and IPP, to include documentation of how the requested services addressed the emergency;

(B) ensure the revision IPC is signed and dated by each member of the service planning team; and

(C) within 10 business days after the service planning meeting, submit to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Request for Authorization of IPP Over Cost Ceiling form;

(V) Specialized Nursing Certification form; and

(VI) adaptive behavior screening assessment;

and

(v) if requested by DADS, additional assessments and supporting documentation related to the individual's diagnosis.

(2) The case manager must ensure:

(A) a revision IPC meets the criteria described in §42.214(b)(1) - (6) of this chapter; and

(B) a revision IPP meets the criteria described in §42.215(2)(A) - (D) of this chapter.

(3) DADS reviews the revision IPC in accordance with §42.221 of this chapter.

(4) The program provider must electronically access TMHP information to verify that services requested on a revision IPC have been authorized by DADS utilizing the Medicaid Eligibility Service Authorization Verification (MESAV).

(d) Review and change other than quarterly, annually, or in an emergency.

(1) If a program provider becomes aware at any time during an individual's IPC period that changes to the individual's services may be necessary, the individual's case manager must:

(A) within five business days after becoming aware that changes to the individual's services may be necessary, convene a service planning team meeting to review and, if determined necessary, revise the IPC and IPP;

(B) ensure the revised IPC is signed and dated by each member of the service planning team; and

(C) within 10 business days after the date of the service planning meeting, submit the following to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Request for Authorization of IPP Over Cost Ceiling form;

(V) Specialized Nursing Certification form; and

(VI) adaptive behavior screening assessment;

and

(v) if requested by DADS, additional assessments and supporting documentation related to the individual's diagnosis.

(2) The case manager must ensure:

(A) a revision IPC meets the criteria described in §42.214(b)(1) - (6) of this chapter; and

(B) a revision IPP meets the criteria described in §42.215(2)(A) - (D) of this chapter.

(3) DADS reviews the revision IPC in accordance with §42.221 of this chapter.

(4) The program provider must electronically access TMHP information to verify that services requested on a revision IPC have been authorized by DADS utilizing the Medicaid Eligibility Service Authorization Verification (MESAV).

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466

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## SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

### 40 TAC §42.404

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §42.404. Service Delivery.

(a) A program provider must ensure that:

(1) a full-time case manager is assigned to provide case management services to no more than 30 individuals or other persons receiving services through another Medicaid waiver at one time; and

(2) a part-time case manager is assigned to provide case management services to no more than 15 individuals or other persons receiving services through another Medicaid waiver at one time.

(b) In determining the number of individuals or other persons receiving services through another Medicaid waiver at one time to whom a case manager will be assigned, the program provider must take into consideration:

(1) the intensity of needs of each individual or person;

(2) the frequency and duration of contacts the case manager will need to make with the individual or person; and

(3) the amount of travel time involved in making such contacts.

(c) A program provider must have:

(1) a sufficient number of case managers available at all times to ensure the provision of case management services; and

(2) a written process that ensures a case manager can readily become familiar with an individual to whom the case manager is not ordinarily assigned but to whom the case manager may be required to provide case management services.

(d) A program provider must have written policies [policies] and procedures that ensure back-up staff are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to deliver services.

(e) A program provider must provide each DBMD Program service authorized in an individual's IPC in accordance with:

(1) the individual's current IPC;

(2) the individual's current IPP; and

(3) the requirements in this chapter.

(f) A program provider must offer an individual choices and opportunities for accessing and participating in community activities, including employment opportunities and experiences available to peers without disabilities, and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's IPC and IPP.

(g) A program provider may accept or decline the request of an individual or LAR for the provision of residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, or intervener services to the individual while the individual is temporarily staying at a location outside the program provider's contracted service delivery area but within the state of Texas.

(h) If the program provider accepts the request of an individual or LAR as described in subsection (g) of this section, the program provider:

(1) may provide residential habilitation, nursing, out-of-home respite in a camp, adaptive aids, and intervener services, and case management services as described in §42.623(a)(2) - (4)(A), (B), (D) of this chapter (relating to Case Management) as well as by telephone contact with the individual;

(2) must document in the service delivery log:

(A) that the individual is receiving services outside the program provider's contracted service delivery area;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the program provider's contracted service delivery area; and

(D) contact information for the individual or LAR;

(3) must, if the individual receives services outside the provider's contracted service delivery area for 30 consecutive days, inform the individual or LAR, on or before the 35th day, that:

(A) to ensure the continued provision of the services, the individual must do one of the following before the 61st day:

(i) transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving the services; or

(ii) return to the program provider's contracted service delivery area; and

(B) if the individual receives services outside the program provider's contracted service delivery area during a period of 60 consecutive days, the individual must return to the contracted service delivery area and receive services in that area before the program provider may accept another request from the individual or LAR for the provision of the services outside the program provider's contracted service delivery area; and

(4) must, if the individual expresses a desire for the individual to transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving services:

(A) give the individual and LAR the Documentation of Provider Choice form for the contracted service delivery area in which the individual is receiving the services;

(B) have the individual or LAR select a program provider and designate that selection on the Documentation of Provider Choice form; and

(C) coordinate the individual's transfer in accordance with §42.231 of this chapter (relating to Coordination of Transfers).

(i) If the program provider declines the request of an individual or LAR as described in subsection (g) of this section, the program provider must:

(1) inform the individual or LAR orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual may request a team meeting to discuss the reasons for declining the request; and

(2) document the discussion and the final outcome if the team meeting is held.

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

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Kenneth L. Owens

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Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## SUBCHAPTER F. SERVICE DESCRIPTIONS AND REQUIREMENTS

### DIVISION 4. ADDITIONAL REQUIREMENTS

#### 40 TAC §42.641

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§42.641. Non-Billable Time and Activities.*

A program provider must not bill DADS for:

- (1) services provided to an individual before DADS approval of the individual's request for enrollment in the DBMD Program;
- (2) supervision of service providers unless providing delegated tasks;
- (3) phone calls, letters, or meetings with DADS or community resources that do not directly address an individual's services;
- (4) administrative meetings or staff meetings;

(5) in-service training, continuing education, or conferences;

(6) employee conferences or evaluations;

(7) filing claims for services;

(8) traveling to and from an individual's residence;

(9) processing paperwork or completing records or reports;

(10) services not included on an approved IPC;

(11) services that are mutually exclusive; [and]

(12) other services and activities not authorized, permitted, or allowed under this chapter;[-]

(13) any expense related to providing residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, or intervener services outside the program provider's contracted service delivery area, including costs for transportation or lodging; and

(14) residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, or intervener services provided to an individual outside the program provider's contracted service delivery area if the individual has received services outside the program provider's contracted service delivery during a period of more than 60 consecutive days.

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

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For further information, please call: (512) 438-4466



## CHAPTER 44. CLIENT MANAGED PERSONAL ATTENDANT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of 40 TAC Chapter 44, Subchapter A, §§44.1 - 44.4; Subchapter B, §§44.11, 44.21, 44.31 - 44.33, 44.41 - 44.43, 44.51, 44.52, 44.61 - 44.65, 44.71, and 44.72; Subchapter C, §§44.81 - 44.83; Subchapter D, §§44.91 - 44.94; Subchapter E, §§44.101 - 44.107; and Subchapter F, §44.111 and §44.112, concerning Client Managed Personal Attendant Services; and new Chapter 44, Subchapter A, §§44.101 - 44.103; Subchapter B, §§44.201 - 44.206; Subchapter C, §§44.301 - 44.309; Subchapter D, §§44.401 - 44.404, 44.420 - 44.422, and 44.440 - 44.442; and Subchapter E, §§44.501 - 44.505, concerning Consumer Managed Personal Attendant Services.

### BACKGROUND AND PURPOSE

The Consumer Managed Personal Attendant Services (CMPAS) Program is a non-Medicaid program providing attendant care services to enhance an individual's participation in community activities, including participation in employment and education

or training opportunities designed to help an individual enter and remain in the work force.

The purpose of the proposal is to repeal current rules governing CMPAS in Chapter 44 and adopt new sections that reorganize the existing chapter and incorporate policy changes that have occurred since the rules were adopted. The proposed rules use the term "financial management services agency" instead of "consumer directed services agency." In addition, the proposed rules better define the role of provider agencies that contract with DADS, clarify how co-payment levels are determined, and add health insurance premiums and retirement contributions as expenses that reduce an individual's gross income in calculating the individual's co-payment.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter A removes rules regarding the purpose of the chapter, definitions of words and terms, qualification to participate in the CMPAS Program, and the three CMPAS Program payment models.

The proposed repeal of Subchapter B removes rules regarding provider agency responsibilities, attendant requirements, eligibility, referral, assessment, service initiation, reassessment, co-payment determination, and allowable and unallowable attendant tasks.

The proposed repeal of Subchapter C removes rules regarding provider agency responsibilities in each of three payment models.

The proposed repeal of Subchapter D removes rules regarding client responsibilities in each of three payment models and for all CMPAS Program services.

The proposed repeal of Subchapter E removes rules regarding service suspension, resuming services following a suspension, terminating services, the purpose of an interdisciplinary team, procedures of interdisciplinary teams, and resolution of service plan and co-payment disagreements.

The proposed repeal of Subchapter F removes rules regarding record keeping and reimbursement.

Proposed new Subchapter A establishes rules regarding the purpose of the chapter, definitions used in the chapter, and a description of the CMPAS Program.

Proposed new Subchapter B establishes rules regarding eligibility criteria, applying for CMPAS Program services, the assessment and eligibility determination process, reassessments, service plan changes, and resolution of service plan and co-payment conflicts.

Proposed new Subchapter C establishes rules regarding initiation of CMPAS Program services, provider qualifications and responsibilities in all service delivery options, attendant qualifications, allowable and unallowable attendant tasks, location of tasks, individual training by a provider, individual responsibilities in all service delivery options, and suspension and termination of services.

Proposed new Subchapter D establishes rules regarding the three CMPAS Program service delivery options: traditional, block grant, and consumer directed.

Proposed new Subchapter E establishes rules regarding determining an individual's co-payment, convening an interdisciplinary team, fair hearing requests, record maintenance and retention, and reimbursement.

#### FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed repeal and new sections are in effect, enforcing or administering the repeal and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal and new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposed revision of Chapter 44 will not make significant changes to program rules or affect provider allocations.

#### PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Commissioner, has determined that, for each year of the first five years the repeal and new sections are in effect, the public benefit expected as a result of enforcing the repeal and new sections is establishing rules that provide greater specificity in areas that have needed policy interpretations.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the repeal and new sections. The repeal and new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to David Latimer at (512) 438-2432 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R07, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R07" in the subject line.

#### SUBCHAPTER A. GENERAL INFORMATION

##### 40 TAC §§44.1 - 44.4

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.1. *What is the purpose of this chapter?*

§44.2. *What do certain words and terms in this chapter mean?*

§44.3. *How does a potential provider agency qualify to participate in the CMPAS Program?*

§44.4. *What are the three CMPAS Program payment models and how do they differ?*

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 June 10, 2013.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## SUBCHAPTER B. RESPONSIBILITIES OF ALL PROVIDER AGENCIES

### DIVISION 1. PROVIDER AGENCY RESPONSIBILITIES

#### 40 TAC §44.11

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.11. *What are the responsibilities under this chapter of all provider agencies in the CMPAS Program?*

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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### DIVISION 2. ATTENDANT REQUIREMENTS

#### 40 TAC §44.21

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.21. *What are the requirements for a person to be an attendant in the CMPAS Program?*

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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### DIVISION 3. ELIGIBILITY, REFERRAL, AND ASSESSMENT

#### 40 TAC §§44.31 - 44.33

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which

provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.31. *When is an applicant considered eligible to receive services under the CMPAS Program?*

§44.32. *How does a person express interest in and be referred for services under the CMPAS Program?*

§44.33. *How does the provider agency determine an applicant's eligibility, co-payment, and service needs?*

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

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Kenneth L. Owens

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## DIVISION 4. SERVICE INITIATION

### 40 TAC §§44.41 - 44.43

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.41. *What training must the provider agency perform before beginning client managed personal attendant services to a client under the CMPAS Program?*

§44.42. *When must the provider agency begin the client managed personal attendant services?*

§44.43. *When must the provider agency discontinue services to a client?*

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

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Kenneth L. Owens

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## DIVISION 5. REASSESSMENT

### 40 TAC §§44.51, §44.52

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.51. *After a provider agency performs an initial assessment of a client under §44.33 of this chapter, how often must the provider agency reassess the client?*

§44.52. *How and when must a provider agency implement changes to a client's service plan that are prompted by a reassessment of the client?*

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

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Kenneth L. Owens

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Department of Aging and Disability Services

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## DIVISION 6. CO-PAYMENT DETERMINATION

### 40 TAC §§44.61 - 44.65

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

#### STATUTORY AUTHORITY



The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.61. *How is a client's co-payment determined and what are the procedures for collecting the co-payment?*

§44.62. *For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?*

§44.63. *For purposes of calculating a client's co-payment, what must a provider agency exclude from a client's total monthly income?*

§44.64. *For purposes of calculating a client's co-payment, what must a provider agency deduct from a client's total monthly income?*

§44.65. *For purposes of calculating a client's co-payment, how must a provider agency determine a client's net monthly income?*

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

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Kenneth L. Owens

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Department of Aging and Disability Services

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## DIVISION 7. TASKS

### 40 TAC §§44.71, §44.72

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.71. *What tasks may an attendant perform for a client under the CMPAS Program, and where may the attendant perform the tasks?*

§44.72. *What tasks must an attendant not perform for a client under the CMPAS Program?*

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

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Kenneth L. Owens

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## SUBCHAPTER C. PROVIDER AGENCY RESPONSIBILITIES IN PAYMENT MODELS

### 40 TAC §§44.81 - 44.83

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.81. *What are the responsibilities under this chapter of the provider agency when a client chooses the agency payment model?*

§44.82. *What are the responsibilities under this chapter of the provider agency when a client chooses the block grant model?*

§44.83. *What are the responsibilities under this chapter of a provider agency when a client chooses the consumer directed services (CDS) model?*

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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## SUBCHAPTER D. CLIENT RESPONSIBILITIES IN PAYMENT MODELS

### 40 TAC §§44.91 - 44.94

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.91. *What are the responsibilities under this chapter of all clients who receive services under the CMPAS Program, regardless of the payment model a client chooses?*

§44.92. *What are the responsibilities under this chapter of clients who choose the agency model?*

§44.93. *What are the responsibilities under this chapter of clients who choose the block grant model?*

§44.94. *What are the responsibilities under this chapter of clients who choose the consumer directed services (CDS) model?*

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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### SUBCHAPTER E. SERVICE SUSPENSION, TERMINATION, AND DISPUTE RESOLUTION

#### 40 TAC §§44.101 - 44.107

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.101. *When must a provider agency suspend services to a client under the CMPAS Program?*

§44.102. *When may a provider agency suspend services to a client under the CMPAS Program?*

§44.103. *What procedures must a provider agency follow to suspend and resume services?*

§44.104. *What are the procedures for terminating services to a client under the CMPAS Program?*

§44.105. *Why does an interdisciplinary team (IDT) meet?*

§44.106. *What procedures do interdisciplinary teams (IDTs) follow?*

§44.107. *How are service plan and co-payment disagreements resolved?*

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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### SUBCHAPTER F. RECORD KEEPING AND REIMBURSEMENT

#### 40 TAC §§44.111, §44.112

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

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.111. *What records must a provider agency maintain?*

§44.112. *How are provider agencies reimbursed?*

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 June 10, 2013.



## CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES SUBCHAPTER A. INTRODUCTION

### 40 TAC §§44.101 - 44.103

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §44.101. Purpose.

This chapter establishes contract requirements for providers and participation requirements for individuals in the Texas Department of Aging and Disability Services (DADS) Consumer Managed Personal Attendant Services (CMPAS) Program.

#### §44.102. Definitions.

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

(1) §1915(c)--A section of the Social Security Act that allows states to establish, by waiver of certain Medicaid requirements, alternative community-based services for individuals who qualify for institutional services.

(2) Applicant--A person who requests services under the CMPAS Program.

(3) Assessor of need--A provider employee responsible for determining an applicant's or individual's need for CMPAS.

(4) Attendant--A person who provides direct care to an individual.

(5) Block grant option--One of three CMPAS Program service delivery and payment options. In the block grant option, the individual is the employer of record of an attendant and the provider is the employer of record of a substitute attendant.

(6) Consumer directed services (CDS) option--One of three CMPAS Program service delivery and payment options. In the CDS option, the individual is the employer of record of the attendant and substitute attendant.

(7) Consumer Managed Personal Attendant Services (CMPAS) Program--A DADS program for personal attendant services in which individuals manage their attendant services to varying degrees.

(8) Contract--The written agreement between DADS and a provider to provide services to individuals eligible under this chapter in exchange for payment.

(9) Contract manager--A DADS employee who is responsible for the overall management of a contract.

(10) DADS--The Department of Aging and Disability Services.

(11) DADS regional designee--A DADS employee appointed by the DADS regional director in each DADS region that offers CMPAS.

(12) Day--A calendar day, which includes a weekend day and holiday.

(13) Family member--A person for whom an individual has a duty under state law to care for.

(14) Financial management services agency--An agency contracting with DADS to provide financial management services.

(15) Health-related task--An activity of daily living, a health maintenance task, or a nursing task, as described in 22 TAC Chapter 225.

(16) Individual--A person enrolled in the CMPAS Program.

(17) Interdisciplinary team (IDT)--A designated group of persons that meets to discuss service delivery issues of an individual, as described in §44.502(a) of this chapter (relating to Convening an Interdisciplinary Team).

(18) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(19) Practitioner's statement--The DADS Practitioner's Statement of Medical Need form (DADS Form 3052).

(20) Provider--A home and community support services agency that contracts with DADS to provide services under the CMPAS Program.

(21) Representative--A person designated by an individual, such as the individual's spouse, relative, or friend; or the individual's legal representative.

(22) Service plan--A document that lists the service tasks and states the hours of services agreed to by the individual and assessor of need.

(23) State mental health facility--A state hospital or a state center with an inpatient psychiatric component operated by the Texas Department of State Health Services.

(24) Substitute attendant--A person who, on a temporary basis and in place of an attendant, provides services to an individual.

(25) Traditional service option--One of three CMPAS Program service delivery and payment options. In the traditional service option, the provider is the employer of record of the attendant and substitute attendant.

(26) Working days--Days DADS state office is open for business.

#### §44.103. Description of the CMPAS Program.

The CMPAS Program is a non-Medicaid program that provides attendant care services to enhance and maintain an individual's integration into the community, including participation in employment and educa-

tion or training opportunities, and community volunteering designed to help the individual enter and remain in the workforce and in the community. The CMPAS Program includes a co-payment provision based on income to allow an individual to participate in the program regardless of income. The program empowers an individual to self-direct services to the greatest extent possible under one of three service delivery options: the traditional service option, the block grant option, or the consumer directed services option.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

### 40 TAC §§44.201 - 44.206

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §44.201. Eligibility Criteria.

(a) To be eligible to receive services under the CMPAS Program, an applicant must:

- (1) be age 18 years of age or older;
- (2) obtain and submit to the provider's assessor of need a completed practitioner's statement;
- (3) be assessed under §44.203 of this subchapter (relating to Assessment and Eligibility Determination) as needing assistance with at least one personal care task and needing an allowable service for at least five hours per week;
- (4) be able and willing to:
  - (A) self-direct the attendant; or
  - (B) designate a relative or friend who is willing and able to direct the attendant without compensation;
- (5) reside in an area in which CMPAS Program services are available;

(6) have a service plan developed under §44.203(a)(6)(A) of this subchapter that does not exceed 52 hours per week of CMPAS Program services;

(7) choose one of the three service delivery options described in Subchapter D of this chapter (relating to Service Delivery Options);

(8) not be receiving services in:

- (A) a hospital;
- (B) a nursing facility;
- (C) a state supported living center;
- (D) a state mental health facility; or
- (E) an intermediate care facility for individuals with an intellectual disability or related conditions.

(b) An individual is not eligible to receive services under the CMPAS Program if the individual is receiving:

(1) other community services and supports, either Medicaid or non-Medicaid, under a service plan that exceeds the reimbursement rate that would have been paid for the same individual to receive services in a nursing facility;

(2) services under any of the following DADS programs:

(A) Primary Home Care, including Family Care (FC) and Community Attendant Services (CAS);

(B) Residential Care; or

(C) Adult Foster Care;

(3) services under a §1915(c) Medicaid waiver program;

(4) regular or ongoing attendant services under either of the following DADS programs:

(A) Special Services to Persons with Disabilities; or

(B) In-Home and Family Support.

(c) An individual may not receive services under the CMPAS Program if the individual is Medicaid eligible and lives in a managed care service area, unless the individual's spouse was employed as the individual's attendant and the individual chose to remain in CMPAS when the managed care service area was expanded to include the individual's place of residence.

#### §44.202. Applying for Services.

(a) To apply for the CMPAS Program, an applicant must contact:

(1) a provider;

(2) a DADS regional office; or

(3) the 2-1-1 Texas Program.

(b) If an applicant contacts a provider, by the next working day the provider must forward to the DADS regional office the applicant's:

(1) name;

(2) address;

(3) birth date;

(4) phone number(s) (if available);

(5) social security number (if available);

(6) current living arrangements;

- (7) employment status;
- (8) DADS individual number (if applicable);
- (9) status regarding receipt of Supplemental Security Income (SSI); and
- (10) date and time the information described in paragraphs (1) - (9) of this subsection was forwarded to DADS.

(c) If an applicant contacts a DADS regional office, the 2-1-1 Texas Program, or a DADS regional office receives information in accordance with subsection (b) of this section, the DADS regional office staff determines if CMPAS Program funding is available. If funding is available, DADS sends a referral to the provider. If no funding is available, DADS regional office staff registers the applicant's name on an interest list by entering information in the DADS Community Services Interest List (CSIL) system. DADS refers an applicant on the interest list for determination of program eligibility in accordance with §44.301 of this chapter (relating to Initiation of Services).

§44.203. Assessment and Eligibility Determination.

(a) Within 30 days after the provider receives a referral from DADS regional office, the provider must:

- (1) ensure that the assessor of need conducts an initial on-site assessment with the applicant;
- (2) determine CMPAS Program eligibility in accordance with §44.201 of this subchapter (relating to Eligibility Criteria);
- (3) inform the applicant, both orally and in writing, of all applicable publicly funded programs that offer attendant services and allow the applicant to choose whether to participate in CMPAS;
- (4) keep in the applicant's record a written record of the notification given in accordance with paragraph (3) of this subsection and the applicant's signed and dated acknowledgement and choice document;
- (5) assess the applicant's service needs by using the DADS Needs Assessment Questionnaire and Task/Hour Guide form available at [www.dads.state.tx.us](http://www.dads.state.tx.us); and
- (6) for an eligible applicant:
  - (A) develop a service plan based on the results of the assessment questionnaire that:
    - (i) includes the number of hours and tasks negotiated between the applicant and the assessor of need; and
    - (ii) is agreed to and signed by the applicant and assessor of need;
  - (B) determine with the applicant the amount of the applicant's co-payment under §44.501 of this chapter (relating to Determining an Individual's Co-payment) and explain to the applicant that making co-payments is required to remain eligible for CMPAS;
  - (C) explain orally and give written information to the applicant on the available service delivery options described in Subchapter D of this chapter (relating to Service Delivery Options);
  - (D) have the applicant sign and date a service delivery option choice document; and
  - (E) keep the signed and dated service delivery choice document in the applicant's file.

(b) If the applicant's service plan includes a health-related task, the provider must:

(1) before an attendant performs a health-related task, verify that the task:

- (A) may be performed under Texas Government Code, §531.051(e);
- (B) does not require nurse or physician delegation; or
- (C) is properly delegated under:
  - (i) 22 TAC Part 11, Chapter 225; or
  - (ii) Texas Occupations Code, Chapter 157; and

(2) if a health-related task is delegated, maintain records in the applicant's file that:

- (A) identify and are signed and dated by the delegating physician or registered nurse;
- (B) include the name of the individual, the names of the attendants performing the delegated health-related tasks for the individual, and a description of the specific health-related tasks to be performed; and
- (C) comply with the Texas Nurse Practice Act, the Medical Practice Act, and any other applicable state or federal law.

(c) The provider must notify an applicant who is not eligible for services in writing by mailing the DADS Notification of Community Care Services form within three days after the date of the decision. This form notifies the applicant of the right to a fair hearing and explains how to request a fair hearing.

(d) The provider must send DADS written notice of the disposition of the referral. The provider must ensure that DADS receives the notice within 30 days after the provider receives the referral from DADS. If the provider does not notify DADS within the 30-day period, DADS may impose contract sanctions on the provider.

(e) The provider must document any failure to complete the assessment activities within the 30-day period, including the reasons for the delay, the provider's ongoing efforts to complete the assessment, and the anticipated date of completion. The reasons for delay must be beyond the provider's control. The provider must send the documentation of delays to the DADS regional designee by the due date in subsection (d) of this section.

(f) Upon receiving notice from the provider of an applicant's eligibility to receive services in the CMPAS Program, the DADS regional designee will enter the CMPAS authorization in DADS Service Authorization System (SAS).

§44.204. Reassessments.

A provider must reassess an individual annually and any time there is a change in the individual's status, as follows:

(1) Annual reassessments. A provider must annually reassess an individual in accordance with §44.203 of this subchapter (relating to Assessment and Eligibility Determination). The provider must complete each on-site annual reassessment no later than one year after the service initiation date and no later than one year after each reassessment.

(2) Reassessment upon change in individual status. When a provider learns that an individual's status may have changed in a way that may affect the individual's eligibility for or receipt of services, the provider must reassess the individual. In doing so, the provider may consider only those factors in §44.203 of this subchapter that have changed since the previous assessment. A change in individual status that requires reassessment may include a change in:

- (A) income, deductions, or exclusions; or

(B) the individual's need for attendant care services, the service plan, or the hours of service.

(3) Notice of eligibility. A provider must send a notice of eligibility and, if applicable, notice of the right to a fair hearing to an individual within five working days after a reassessment using the DADS Notification of Community Services form.

§44.205. Service Plan Changes.

(a) An individual and the assessor of need must agree to and sign a service plan change.

(b) A provider must:

(1) implement a change to an individual's co-payment to be effective on the first day of the month following a reassessment;

(2) notify the DADS regional designee in writing of a service plan change within seven days after the completion of a reassessment using a single document that contains:

(A) the date the notification document was completed;

(B) the contract number;

(C) the service plan change and effective date of the service plan change;

(D) the name of the individual;

(E) the service tasks assigned to the individual's attendant;

(F) the name of the assessor of need;

(G) the service schedule;

(H) the signature of the assessor of need; and

(I) the date the notification document was signed;

(3) provide a copy of the service plan change to the individual including, if applicable, a notice of the right to a fair hearing;

(4) document a service plan change:

(A) in the individual's file; and

(B) according to the terms of the contract; and

(5) implement a service plan change within three days after notification by the DADS regional designee that the service plan has been entered into the service authorization system.

(c) The DADS regional designee enters the change in the individual's service plan into the service authorization system and notifies the provider.

§44.206. Service Plan and Co-payment Disagreements.

(a) Service plan disagreements. If a provider and individual disagree on the number of hours of service or service tasks to be on the individual's service plan:

(1) the provider must offer the individual orally and in writing an informal dispute resolution (IDR) process through a meeting of the individual's IDT; and

(2) if the individual disagrees with the provider's decision after going through the IDR process, the individual may request a fair hearing as provided in §44.503 of this chapter (relating to Fair Hearing).

(b) Co-payment disagreements. If a provider and individual disagree on the amount of the individual's co-payment:

(1) the provider must offer the individual orally and in writing an IDR process through a meeting of the individual's IDT; and

(2) if the individual disagrees with the provider's decision after going through the IDR process, the individual may request a fair hearing as provided in §44.503 of this chapter.

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

Filed with the Office of the Secretary of State on June 10, 2013.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466

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SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

**40 TAC §§44.301 - 44.309**

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.301. Initiation of Services.

(a) When CMPAS Program funding becomes available to serve applicants on the CMPAS interest list, the DADS regional designee or other designated DADS staff:

(1) releases funding for applicants on the interest list on a first-come, first-served basis;

(2) refers the applicant on the interest list to the region's contracted provider in order to enroll in the CMPAS Program; and

(3) informs the provider of any other DADS program services the applicant is receiving, the cost of those services, and the approved service period for those services.

(b) The provider must provide CMPAS Program services to all individuals DADS refers to the provider unless the assessor of need determines and documents:

(1) the applicant is not eligible for CMPAS;

(2) the provider and other sources of support are unable to meet the individual's needs without risking the individual's health and safety;

(3) the environment in the individual's home is a serious threat to the health and safety of the attendant; or

(4) the individual or someone in the individual's home seriously threatens the health and safety of the attendant.

(c) The provider must conduct an IDT meeting in accordance with the requirements of §44.502 of this chapter (relating to Convening an Interdisciplinary Team) if it determines it cannot provide CMPAS Program services to an individual for any of the reasons described in subsection (b)(2) - (4) of this section.

(d) The provider must begin providing services to an individual within seven days after determining the individual is eligible and funding is available.

§44.302. Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options.

To participate as a provider in the CMPAS Program, the provider must:

(1) maintain a license from DADS under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies), in the personal assistance services category of licensure;

(2) meet the requirements described in Chapter 49 of this title (relating to Contracting for Community Care Services);

(3) secure requisite training to function as an FMSA for those individuals who choose the consumer directed services option for CMPAS services;

(4) enter into a contract with DADS to provide CMPAS Program services and meet the requirements described in this chapter;

(5) have contract compliance monitored by a DADS contract manager;

(6) be able to provide services under all three service delivery options;

(7) provide case management services, including:

(A) determining applicant eligibility and co-payment amount;

(B) preparing individual registration data entry forms;

(C) assessing and reassessing individual needs using DADS Form 2060, Assessment Questionnaire and Task/Hour Guide; and

(D) developing a service plan.

§44.303. Attendant Qualifications.

For a person to be an attendant in the CMPAS Program, the person must:

(1) be age 18 years of age or older;

(2) be able to work part or all of the hours needed by the individual;

(3) agree to be interviewed by the individual;

(4) have reliable transportation to the individual's home;

(5) demonstrate to the satisfaction of the individual that the person is capable of performing the tasks included in the individual's service plan, including being able to take direction from the individual or the individual's representative; and

(6) meet the requirements for unlicensed personnel at §97.247 of this title (relating to Verification of Employability and Use of Unlicensed Persons) and the requirements of Texas Health and Safety Code, Chapter 250 concerning nurse aid registry and criminal history checks.

§44.304. Allowable and Unallowable Tasks.

(a) Allowable tasks. Except as otherwise provided in subsection (b) of this section, an attendant may perform one or more of the following tasks for an individual enrolled in the CMPAS Program:

(1) personal care tasks required to maintain the individual's physical health, including:

(A) bathing;

(B) dressing and undressing;

(C) preparing meals;

(D) assisting with eating, including:

(i) assisting with eating and drinking utensils and adaptive devices; and

(ii) providing standby assistance or encouragement;

(E) exercising;

(F) toileting, including:

(i) changing an incontinence brief;

(ii) assisting with the use of a bedpan or urinal;

(iii) assisting with feminine hygiene needs, including menstruation supplies;

(iv) assisting with clothing during toileting, including raising, lowering, removal or replacement of garments for hygiene needs;

(v) assisting with toilet hygiene, including the use of toilet paper and washing hands;

(vi) changing an external catheter;

(vii) preparing toileting supplies and equipment but not preparing catheter equipment unless it is a delegated task as described in paragraph (4) of this subsection; and

(viii) providing standby assistance;

(G) positioning;

(H) assisting with self-administered medication, including administration through a permanently placed feeding tube;

(I) grooming;

(J) routine hair and skin care; and

(K) transfer or ambulation, including lifting;

(2) home management tasks that support the individual's health and safety, including:

(A) changing the bed linens and making the bed;

(B) housekeeping services, including cleaning and laundry;

(C) shopping for or with the individual;

(3) escorting assistance tasks, including:

(A) accompanying the individual outside the home to support the individual to live in the community;

(B) assisting with or arranging for transportation and escorting on public transit, but not providing transportation;

(C) accompanying the individual to a clinic, doctor's office, or other trip made for the purpose of obtaining a medical diagnosis or treatment; and

(D) waiting in a doctor's office or clinic with an individual if necessary due to the individual's condition or distance from home;

- (4) delegated health-related tasks; and
- (5) health-related tasks that do not require delegation.

(b) Unallowable tasks. An attendant must not perform any task for an individual if:

- (1) performing the task would require additional licensure beyond the license held by the attendant or provider, including nursing services that have not been properly delegated to the attendant;
  - (2) the task is not among those listed in subsection (a) of this section;
  - (3) the task is not contained in the individual's service plan;
- or
- (4) performing the task would be fraudulent or illegal.

§44.305. Location of Tasks.

An attendant may perform an allowable task for an individual in the individual's home, at a work site, or in another appropriate location, including a shopping mall, a movie theater, or a community event.

§44.306. Individual Training by a Provider.

Before providing services to an individual enrolled in the CMPAS Program, a provider must educate and train the individual in:

- (1) rights and responsibilities of the individual;
- (2) if desired by the individual, skills for recruiting, selecting, instructing, supervising, and dismissing attendants;
- (3) procedures for preparing attendant time sheets;
- (4) procedures for the CMPAS Program service delivery option that the individual chooses; and
- (5) rights and responsibilities of the attendant and the substitute attendant.

§44.307. Individual Responsibilities in All CMPAS Service Delivery Options.

An applicant, individual, or the representative of an applicant or individual must:

- (1) obtain and submit a practitioner's statement to the assessor of need;
- (2) negotiate with the assessor of need at an assessment or reassessment to determine which allowable tasks in §44.304 of this subchapter (relating to Allowable and Unallowable Tasks) are included in the individual's service plan;
- (3) select, supervise, and release from service an attendant;
- (4) train and supervise a personal attendant in the specifics of the delivery of services;
- (5) certify the attendant's time worked on or after the last day of each recording period by:
  - (A) verifying, signing, dating, and submitting to the provider the attendant's time sheet; or
  - (B) if applicable, submitting appropriate certification of the attendant's time worked through a provider's electronic service delivery documentation system;
- (6) notify the provider within 10 days after the date the individual begins receiving services under another DADS program that duplicates the services provided under the CMPAS Program;

(7) submit any required co-payment to the provider as required by §44.501 of this chapter (relating to Determining an Individual's Co-payment);

(8) provide proof of income to the assessor of need upon request;

(9) obtain and submit to the assessor of need a proper physician's order and physician's or registered nurse's documentation for any delegated health-related task to be included in the service plan before the task is included in the service plan; and

(10) inform the provider and DADS within 10 days after a change in the individual's:

- (A) mailing or residence address;
- (B) telephone number;
- (C) physical condition that may affect the need for services;
- (D) total monthly income, as calculated in accordance with §44.501(f) of this chapter;
- (E) income exclusions, as described in §44.501(i) of this chapter; and
- (F) monthly deductions, as described in §44.501(j) of this chapter.

§44.308. Suspension of Services.

- (a) A provider must suspend services to an individual if:
  - (1) the individual changes residence to outside the state of Texas;
  - (2) the individual moves to a location where the provider does not provide CMPAS Program services to the individual;
  - (3) the individual dies;
  - (4) the individual is admitted to:
    - (A) a hospital;
    - (B) a nursing facility;
    - (C) a state supported living center;
    - (D) a state mental health facility; or
    - (E) an intermediate care facility for individuals with an intellectual disability or related conditions;
  - (5) the individual or the individual's legal representative requests that services end;
  - (6) the individual, the individual's representative, or someone in the individual's home, as applicable, refuses to:
    - (A) supervise the attendant;
    - (B) adhere to the service plan; or
    - (C) otherwise comply with a requirement of the CMPAS Program;
  - (7) the individual or the individual's representative, as applicable, does not have the ability to:
    - (A) supervise the attendant;
    - (B) adhere to the service plan; or
    - (C) otherwise comply with a requirement of the CMPAS Program;



(8) the individual does not submit a co-payment as required by §44.501 of this chapter (relating to Determining an Individual's Co-payment);

(9) the individual does not provide a practitioner's statement as required by §44.307 of this subchapter (relating to Individual Responsibilities in All CMPAS Service Delivery Options); or

(10) the provider becomes aware that the individual no longer meets eligibility requirements for the CMPAS Program.

(b) The provider may suspend services if:

(1) the individual or someone in the individual's home engages in discrimination in violation of law;

(2) the individual or representative fails to effectively manage attendant care, including problems with:

(A) hiring, selecting, or retaining an attendant for reasons other than workforce issues;

(B) reaching an agreement on the amount of reimbursement the provider will retain (in the block grant option); or

(C) completing or submitting required program documentation; or

(3) the individual or someone in the individual's home exhibits reckless behavior that may result in imminent danger to the health or safety of the individual, the attendant, or another person.

(c) Under the circumstances described in subsection (b)(3) of this section, the provider must immediately report the situation to:

(1) the Department of Family and Protective Services or other appropriate protective services agency;

(2) local law enforcement; and

(3) the DADS regional designee.

(d) Within seven days after suspending an individual's services, the provider must notify the DADS regional designee of the suspension in writing and provide a copy of the notice to the individual. The written notice of suspension must include:

(1) the date of service suspension;

(2) the reason for the suspension;

(3) the duration of the suspension, if known; and

(4) an explanation of the provider's attempts to resolve the problem that caused the suspension, and the reasons why the problem was not resolved.

(e) A provider must convene an IDT meeting, as described in §44.502 of this chapter (relating to Convening an Interdisciplinary Team), within seven days after sending the written notice of suspension, if services are suspended for a reason described in subsection (a)(6) and (7) or (b)(1) - (3) of this section.

(f) A provider must resume services after a suspension:

(1) upon the individual's return home, if applicable;

(2) on the date specified in writing by the DADS regional designee;

(3) as a result of a recommendation by the IDT; or

(4) upon the provider's receipt of notification from the DADS regional designee that the provider must resume services pending the outcome of a fair hearing.

(g) The provider must send written notice to the DADS regional designee that services have resumed within seven days after the date services resume.

#### §44.309. Termination of Services.

A provider may terminate services for the same reasons for suspending services, listed in §44.308 of this subchapter (relating to Suspension of Services). If a provider intends to terminate services after an IDT meeting required by §44.308(e) of this subchapter, the provider must:

(1) send written notice of the termination to the individual;

(2) inform the individual in the written notice of:

(A) the termination date;

(B) the reason for termination;

(C) the right to appeal the termination decision in accordance with §44.503 of this chapter (relating to Fair Hearing); and

(D) the individual's right to continue to receive services pending a fair hearing.

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

Filed with the Office of the Secretary of State on June 10, 2013.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466



## SUBCHAPTER D. SERVICE DELIVERY OPTIONS

### DIVISION 1. TRADITIONAL SERVICE OPTION

#### **40 TAC §§44.401 - 44.404**

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §44.401. Description of the Traditional Service Option.

In the traditional service option, the individual retains control over certain personnel decisions, including selecting, supervising, and dismissing the attendant, but the provider is the employer of record for the attendant and substitute attendant.

#### §44.402. Provider Responsibilities in the Traditional Service Option.

In the traditional service option, a provider must comply with §44.302 of this chapter (relating to Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options) and must:

(1) maintain and supervise a pool of substitute attendants to provide attendant services upon the individual's request;

(2) refer prospective attendants to the individual until the individual selects an attendant;

(3) hire an attendant who meets the qualifications of §44.303 of this chapter (relating to Attendant Qualifications) and whom the individual agrees to supervise;

(4) if an individual has not selected a prospective attendant within seven days from the date the assessor of need determined the individual to be eligible for services:

(A) confer with the individual;

(B) identify the reasons the individual has not selected an attendant; and

(C) provide training when necessary to enable the individual to select an attendant;

(5) provide to an attendant an initial orientation training before the attendant provides services to an individual that includes the following topics:

(A) basic interpersonal skills;

(B) needs of persons with disabilities;

(C) first aid;

(D) universal safety precautions;

(E) safety and emergency procedures;

(F) proper completion of required forms;

(G) explanation of the individual's role as supervisor;

(H) explanation of the provider's responsibilities to attendants;

(I) attendant rights and responsibilities;

(J) specific information needed to provide tasks to the individual;

(K) reporting changes in the individual's condition to the provider, including any suspected abuse, neglect, or exploitation; and

(L) instructions to provide only authorized tasks according to the service plan, unless the individual pays for additional time with the individual's own funds;

(6) assume all responsibility for paying and filing attendant income and unemployment taxes and associated paperwork;

(7) assume liability for attendant work-related injuries to the same extent as any employer;

(8) prepare payroll and distribute payroll checks to attendants as required by state and federal law;

(9) actively intervene to resolve problems between an individual and the individual's attendant when they cannot resolve problems on their own;

(10) determine the salary and benefit package of an attendant;

(11) not discriminate against an attendant or applicant in violation of law;

(12) accept responsibility for acts of attendants on the job to the same extent as any employer; and

(13) conduct on-site visits in addition to those described in §44.203 of this chapter (relating to Assessment and Eligibility Determination) and §44.204 of this chapter (relating to Reassessments), based on the specific needs of the individual or attendant, but at least annually, to assess and document:

(A) that the individual's service plan is adequate;

(B) that the individual continues to need the services;

(C) whether the individual needs a service plan change;

(D) that the attendant remains competent to perform the allowable tasks; and

(E) that the attendant is performing the allowable tasks.

§44.403. Attendant Services Provided Outside the Provider Contracted Service Delivery Area in the Traditional Services Option.

(a) A provider may develop a service plan that includes, at the request of the individual, services provided while the individual is temporarily staying at a location outside the provider's contracted service delivery area but within the State of Texas.

(b) The service plan must not exceed the weekly authorized hours.

(c) The provider may accept or decline the request of an individual for the provision of services while the individual is temporarily staying at a location outside the contracted service delivery area but within the State of Texas.

(1) If the provider accepts the individual's request, the provider:

(A) may provide services to the individual during a period of no more than 60 consecutive days;

(B) must, within three days after the provider begins providing services to the individual, notify the DADS regional designee in writing of the following:

(i) that the individual is receiving services outside the provider's contracted service delivery area;

(ii) the location where the individual is receiving services;

(iii) the estimated length of time the individual is expected to be outside the contracted service delivery area; and

(iv) contact information for the individual;

(C) must notify the DADS regional designee in writing that the individual has returned to the provider's contracted service delivery area within three working days after becoming aware of the individual's return; and

(D) is not required to pay for expenses incurred by attendants delivering services outside the contracted service delivery area.

(2) If the provider declines the request of an individual as described in subsection (a) of this section, the provider must orally inform the individual:

(A) of the reasons for declining the request;

(B) that the individual may request a meeting with the provider and the DADS regional designee to discuss the reasons for declining the request; and

(C) within three days after declining the request, inform the DADS regional designee, in writing, that the request was declined and the reasons for declining the request.

(d) If an individual receives services outside the provider's contracted service delivery area during a period of 60 consecutive days, the individual must return to the contracted service delivery area and receive services in that service delivery area before the provider can agree to another request from the individual for provision of services outside the provider's contracted service delivery area.

(e) If the individual intends to remain outside the provider's contracted service delivery area for a period of more than 60 consecutive days, the provider must convene an interdisciplinary team meeting, including the DADS regional designee, as provided by §44.502 of this chapter (relating to Convening an Interdisciplinary Team) to consider options available to the individual for continuation of services.

§44.404. Individual Responsibilities in the Traditional Service Option.

Individuals who choose the traditional service option must comply with the responsibilities listed in §44.307 of this chapter (relating to Individual Responsibilities in All CMPAS Service Delivery Options) and must:

- (1) actively assist the provider in recruiting attendants and substitute attendants by seeking out and referring potential attendants to the provider;
- (2) select an attendant from among the potential attendants whom the provider refers to the individual;
- (3) actively assist in delegating, directing, and training for tasks being performed;
- (4) not discriminate against any potential attendant, attendant, or substitute attendant in violation of law; and
- (5) interview any prospective attendant whom the provider refers to the individual and inform the provider within seven days after the referral of whether the individual selects the attendant.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## DIVISION 2. BLOCK GRANT OPTION

### 40 TAC §§44.420 - 44.422

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, in-

cluding DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §44.420. Description of the Block Grant Option.

Effective September 1, 2013, an individual may not choose the block grant option. An individual receiving CMPAS services through the block grant option on that date may continue to receive services under this option but, if the individual chooses another service delivery option, the individual may not return to the block grant option. In the block grant option, the individual is the employer of record for an attendant and is responsible for payroll, filing tax-related reports, and developing a monthly budget. The provider is the employer of record for a substitute attendant.

#### §44.421. Provider Responsibilities in the Block Grant Option.

In the block grant option, a provider must comply with §44.302 of this chapter (relating to Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options) and must:

- (1) reimburse the individual for attendant wages and employment taxes paid by the individual;
- (2) negotiate with the individual and agree on an amount that the provider will retain from reimbursements made under §44.505 of this chapter (relating to Reimbursement) to compensate the provider for its services to the individual and that is based on the provider's actual cost of providing services to the individual, which may include:
  - (A) the cost of providing substitute attendants;
  - (B) the cost of providing administrative services;
  - (C) the history of the individual's use of substitute attendants; and
  - (D) the need for provider intervention;
- (3) maintain and supervise a pool of substitute attendants to provide attendant services upon the individual's request;
- (4) provide each substitute attendant an initial orientation before the attendant provides services to the individual that includes the following topics:
  - (A) basic interpersonal skills;
  - (B) needs of persons with disabilities;
  - (C) first aid;
  - (D) safety and emergency procedures;
  - (E) proper completion of required forms;
  - (F) explanation of the individual's role as supervisor;
  - (G) explanation of the provider agency's responsibilities to attendants;
  - (H) attendant rights and responsibilities;
  - (I) specific information needed to provide tasks to the individual;
  - (J) reporting changes in the individual's condition to the provider agency; and

(K) instructions to provide only authorized tasks in accordance to the service plan, unless the individual pays for additional time with the individual's own funds;

(5) send a substitute attendant at the individual's request;

(6) for any individual the provider learns is failing to fully perform any duty the individual is required to perform as the attendant's employer of record:

(A) counsel the individual regarding the consequences of noncompliance;

(B) offer the individual the choice of another CMPAS Program option; and

(C) consider suspending services as provided by §44.308 of this chapter (relating to Suspension of Services) if the individual does not choose the traditional service option and does not perform the duties as employer of record.

*§44.422. Individual Responsibilities in the Block Grant Option.*

In the block grant option, an individual must comply with the responsibilities listed in §44.307 of this chapter (relating to Individual Responsibilities in All CMPAS Service Delivery Options) and must:

(1) select, hire, and pay his or her own attendants as the employer of record;

(2) resolve any employment-related problems or disagreements directly with his or her attendant;

(3) not discriminate against an attendant or applicant in violation of law;

(4) assume liability for work-related attendant injuries and responsibility for work-related attendant conduct to the same extent as any employer;

(5) spend funds received from the provider that were reimbursed under §44.505 of this chapter (relating to Reimbursement) only on attendant wages, employment-related tax payments, and employee benefits;

(6) prepare and sign an agreement with the attendant that includes:

(A) the tasks the attendant is to perform for the individual;

(B) the schedule the attendant will work for the individual;

(C) the hourly rate, at or above the minimum required by law, the individual will pay the attendant;

(D) the schedule the individual will pay the attendant (at least twice per month);

(E) the reasons the individual may terminate the attendant's employment; and

(F) a requirement that the attendant provide the individual at least 24 hours advance notice if unable to work a scheduled shift;

(7) supervise the attendant's recording of hours worked, including signing, dating, and submitting the attendant's time sheet to the provider on or after the last day of the reporting period during which services were provided; and

(8) submit to the provider, within 30 days after filing, copies of any employment-related government forms the individual files for his or her employees as the employer of record, including all

required Internal Revenue Service obligations and required reports to the Texas Workforce Commission.

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

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### DIVISION 3. CONSUMER DIRECTED OPTION

#### 40 TAC §§44.440 - 44.442

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### *§44.440. Description of the Consumer Directed Services Option.*

In the consumer directed services option, an individual is the employer of record for an attendant and substitute attendant but the provider is responsible for payroll for attendants and substitute attendants and filing tax-related reports for attendants and substitute attendants.

#### *§44.441. Provider Responsibilities in the Consumer Directed Services Option.*

In the consumer directed services option, a provider must comply with the responsibilities listed in §44.302 of this chapter (relating to Provider Qualifications and Responsibilities in All CMPAS Service Delivery Options) and must provide financial management services on behalf of the individual:

(1) approving and monitoring a budget for services delivered through the consumer directed services option;

(2) managing payroll, including calculating employee withholdings and employer contributions and depositing the funds with the appropriate agencies;

(3) complying with applicable government regulations concerning employee withholding, garnishments, mandated withholding, and benefits;

(4) preparing and filing required tax forms and reports;

(5) paying allowable expenses incurred by the individual;

(6) obtaining employer-agent status with the Internal Revenue Service, the Texas Workforce Commission, and any other appropriate government agencies within the time frame established by each agency;

(7) performing all employer-agent responsibilities required by government agencies that regulate the relationship between the employer-agent and the individual acting as the employer of record and maintain an original or a copy of each form required to document compliance; and

(8) attending, at least annually, DADS training for financial management services agencies.

§44.442. Individual Responsibilities in the Consumer Directed Services Option.

In the consumer directed services option, an individual must comply with §44.307 of this chapter (relating to Individual Responsibilities in All CMPAS Service Delivery Options) and comply with the employer responsibilities described in Chapter 41 of this title (relating to Consumer Directed Services Option).

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

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## SUBCHAPTER E. ADDITIONAL PROGRAM REQUIREMENTS

### 40 TAC §§44.501 - 44.505

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§44.501. Determining an Individual's Co-Payment.

(a) An individual's co-payment is a percentage of the monthly cost of services provided to the individual. To calculate an individual's co-payment, a provider must:

(1) determine the individual's total net monthly income in accordance with subsections (f) - (i) of this section;

(2) determine the individual's co-payment percentage by using the individual's net monthly income and the CMPAS co-pay schedule located in the DADS Case Manager Community Care for Aged and Disabled Handbook, Appendix XXXV;

(3) inform the individual of the individual's estimated monthly co-payment by multiplying the authorized hours of service per month by the hourly reimbursement rate, multiplied by the co-payment percentage;

(4) calculate the amount of the individual's actual monthly co-payment each month by multiplying the individual's co-payment percentage amount by the reimbursement rate, multiplied by the number of hours of service actually provided during the month.

(b) An individual who suffers undue hardship as a result of legal financial obligations for reasons such as a catastrophic illness of the individual or a family member may request that his or her co-payment be temporarily reduced or waived. To request a reduction or waiver of a co-payment, the individual must make the request to the assessor of need and document the legal financial obligation that necessitates the reduction or waiver.

(1) The provider may approve a reduction or waiver for a three-month period. The individual must resubmit a new request to receive three-month extensions to the waiver or reduction.

(2) If the provider does not approve a reduction or waiver, the provider must offer the individual orally and in writing an informal dispute resolution (IDR) process which includes a meeting of the IDT and notify the individual of the right to a fair hearing as provided by §44.503 of this subchapter (relating to Fair Hearing).

(c) The provider must bill a co-payment amount to an individual by or on the 15th day of the month following the month in which services were provided. The bill must show the co-payment percentage, the reimbursement rate, the total number of hours of service for the month, the total cost, and the actual amount of the co-payment due. If payment is not made within 15 days after billing, the provider must send a second notice to the individual within 10 days after the bill was due. If the individual does not pay the amount due by the 20th day of the month after the month in which the second notice was sent, the provider must suspend services.

(d) A provider must not charge an individual a fee for late payment.

(e) In collecting monthly co-payments, a provider must:

(1) provide the individual a receipt containing the provider's name, individual's name, amount paid, and the date of the payment;

(2) retain a copy of the receipt;

(3) deduct the co-payment from reimbursement claims submitted to DADS under §44.505 of this subchapter (relating to Reimbursement); and

(4) maintain a current individual co-payment ledger system, in accordance with generally accepted accounting principles, that reflects all charges to and all payments by an individual.

(f) A provider must calculate an individual's total monthly income by adding:

(1) the gross monthly earnings of the individual and the individual's spouse, including:

(A) employee wages or salary; and

(B) commissions, tips, piece-rate payments, and cash bonuses;

(2) the net monthly receipts of the individual and the individual's spouse from non-farm self-employment, calculated by subtracting business expenses from gross receipts, as described in subsection (g) of this section;

(3) the net monthly receipts of the individual and the individual's spouse from farm self-employment, calculated by subtracting

business expenses from gross receipts, as described in subsection (h) of this section;

(4) the gross monthly benefits received by the individual and the individual's spouse, including:

(A) pensions, retirement, disability, and survivors' benefits;

(B) education loans, scholarships, and grants to the extent funds are or may be applied to living costs;

(C) payments from annuities, insurance, and irrevocable trust funds;

(D) public assistance payments, such as Temporary Assistance to Needy Families or Supplemental Security Income, and including general assistance from a local government source;

(E) court-ordered support payments, such as alimony and child support payments for a minor child;

(F) unemployment compensation and union strike payments;

(G) workers' compensation payments or other compensation for work injuries;

(H) Veterans Administration payments, such as subsistence allowances and refunds of GI insurance premiums; and

(I) other monthly support, such as allotments or payments from friends or relatives; and

(5) the net monthly income from property of the individual or the individual's spouse, calculated by averaging receipts over a 12-month period, including:

(A) dividends and interest payments;

(B) receipts from a life estate, other estate, or trust fund;

(C) income from a mortgage, promissory note, or other negotiable instrument;

(D) income from lease of mineral rights, calculated by subtracting the following prorated payments from gross royalties or lease payments:

(i) property taxes (not including windfall profit taxes); and

(ii) excise taxes; and

(E) income from rental property, including rent from boarders, calculated by subtracting the following prorated payments from gross receipts:

(i) mortgage interest;

(ii) property repair and maintenance expenses (not including improvements or depreciation charges);

(iii) property insurance; and

(iv) property taxes.

(g) For purposes of calculating net monthly receipts from non-farm self-employment in accordance with subsection (f)(2) of this section:

(1) gross receipts means the value of all goods sold and services provided by the non-farm self-employment enterprise; and

(2) business expenses means the actual operating expenses of the non-farm self-employment enterprise, including:

(A) purchased goods or services;

(B) rent;

(C) utilities;

(D) depreciation charges;

(E) wages and salaries; and

(F) business taxes, which do not include personal income taxes.

(h) For purposes of calculating net monthly receipts from farm self-employment in accordance with subsection (f)(3) of this section:

(1) gross receipts means the value of all goods sold and services provided by the farm self-employment enterprise, except for goods and services used for family living. Gross receipts include receipts from:

(A) the sale of crops;

(B) the rental of farm equipment;

(C) the sale of wood, sand, gravel, and similar items;

and

(D) government crop loans;

(2) business expenses means the actual operating expenses of the farm self-employment enterprise, including:

(A) the cost of feed, fertilizer, seed, and other farming supplies;

(B) wages and salaries;

(C) depreciation charges;

(D) rent;

(E) interest on farm mortgages;

(F) farm building repairs; and

(G) farm taxes, which do not include personal income taxes.

(i) A provider must calculate an individual's income exclusions by adding:

(1) payments to satisfy a judgment of the Indian Claims Commission or its successor agency, the U.S. Court of Claims;

(2) any payment received under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) education loan, grant, and scholarship funds that are not or cannot be applied to living costs;

(4) Veterans Administration payments, such as aid-and-attendance benefits, homebound elderly benefits, and payments for purchase of medications;

(5) in-kind credits, such as rent subsidies;

(6) infrequent or irregular payments from any source that occur no more often than once a quarter and that do not exceed \$20 a month;

(7) reimbursements from an insurance company for health insurance claims; and

(8) grants, such as those made through the DADS In-Home and Family Support Program.

(j) A provider must calculate an individual's income deductions by adding:

(1) the prorated monthly cost of tuition and books when enrolled in an accredited institution of higher education or skills training program;

(2) \$93 for the individual's spouse;

(3) \$93 for each dependent of the individual;

(4) \$93 for the individual;

(5) funds the law requires be withheld, such as deductions for income taxes or to comply with the Federal Insurance Contributions Act (FICA);

(6) amounts spent on disability-related equipment that cost more than \$500, such as wheelchair-compatible vans, vehicle modifications, and power wheelchairs (not including transportation costs);

(7) amounts dedicated to be spent on disability-related equipment that costs more than \$500, such as wheelchair-compatible vans, vehicle modifications, and power wheelchairs (not including transportation costs), in accordance with the following requirements:

(A) the individual must identify to the provider the equipment to be purchased and must submit to the provider a written estimate of the cost of the equipment including a dealer's estimate or an advertisement with a listed purchase price of comparable equipment;

(B) the individual must open a dedicated account for the exclusive purpose of purchasing identified equipment;

(C) the first \$500 deposited does not reduce the monthly income;

(D) the individual must provide an estimate of the amount deposited each month to the dedicated account, the date the deposit is made each month, and the estimated date of the purchase;

(E) the individual must report each month to the provider the actual amount deposited in the dedicated account for that month and the accumulated total in the account;

(F) based on the individual's report, the provider must make the corresponding deduction from the individual's monthly income and any interest earned on the dedicated account will not be included as income if the interest payments are eventually used to purchase the equipment;

(G) the individual must report to the provider when any funds are withdrawn from the account for any purpose other than for the purchase of the equipment and the provider must include this amount as income for the month in which these funds are withdrawn;

(H) the individual must report to the provider when the funds are withdrawn from the account at the time the purchase is made and furnish a sales receipt showing the purchase price and date of purchase; and

(I) the individual must close the account after the purchase of the equipment and report to the provider the amount of any remaining funds, which the provider must include as income for the month in which the account is closed;

(8) child-care costs (actual expenses the individual paid to someone to care for his or her child, not including child support payments) up to \$350 per month for each child through age 5, and up to \$200 per month for each child age 6-12;

(9) annualized costs of expenditures for health insurance premiums for the individual and the individual's spouse and dependents, and for medical treatment and prescriptions for the individual, the individual's spouse and the individual's dependents that are not reimbursed by insurance; and

(10) annual contributions to a retirement plan in an amount up to 20 percent of the individual's total income as calculated in accordance with subsection (f) of this section.

(k) To determine an individual's net monthly income for co-payment purposes, a provider must:

(1) determine the individual's total monthly income in accordance with subsection (f) of this section;

(2) subtract from that amount the income exclusions calculated in accordance with subsection (i) of this section; and

(3) subtract from that amount the income deductions calculated in accordance with subsection (j) of this section.

#### §44.502. Convening an Interdisciplinary Team.

(a) An IDT must include:

(1) the individual, the individual's representative, or both;

(2) a provider representative; and

(3) other persons as necessary or as requested by the individual.

(b) The provider must convene an IDT meeting by telephone conference call or in person within five working days after:

(1) suspending or terminating services to an individual under §44.308 of this chapter (relating to Suspension of Services) or §44.309 of this chapter (relating to Termination of Services);

(2) identifying an issue that prevents the provider from carrying out a requirement of the CMPAS Program; or

(3) at the request of the individual to mediate service plan or co-payment disagreements as provided for in §44.206 of this chapter (relating to Service Plan and Co-payment Disagreements).

(c) If the provider is unable to convene an IDT meeting with all the members described in subsection (a) of this section, the provider must convene the IDT meeting with the available members and send documentation of the IDT meeting to the individual.

(d) The IDT must:

(1) evaluate the problem, ensuring that the problem is not due to discrimination in violation of law;

(2) identify any possible solutions to the problem; and

(3) make recommendations to the provider and the individual.

(e) The provider must, within two working days after the IDT meeting:

(1) document the outcome of the IDT meeting and keep the documentation in the individual's record; and

(2) provide a written copy of the documentation to the individual and notify the individual of the right to request a fair hearing as provided by §44.503 of this subchapter (relating to Fair Hearing) if the individual is not satisfied with the meeting outcome.

#### §44.503. Fair Hearing.

An individual may request a fair hearing for any action that affects the co-payment of the individual or that denies, reduces, or terminates benefits in accordance with 1 TAC Part 15, Chapter 357, Subchapter A. DADS will not continue services pending a hearing if a suspension or termination is based on §44.308(b)(3) of this chapter (relating to Suspension of Services). The individual's provider must attend a hearing to explain any decision or action that led to the hearing.

§44.504. Records.

(a) General requirements. The provider must maintain records according to:

- (1) this chapter;
- (2) Chapter 49 of this title (relating to Contracting for Community Care Services);
- (3) Chapter 69 of this title (relating to Contract Services);
- (4) the terms of the contract; and
- (5) the provider's policy.

(b) Service delivery documentation. The provider must maintain records of the services delivered to the individual, including records relating to disagreements, suspensions, and termination of services.

(1) An individual must periodically record on a time sheet the attendant's delivery of services to the individual and must submit a copy of each completed time sheet to the provider. Each time sheet must be a single document that contains:

- (A) the name of the individual;
- (B) the individual's DADS identification number;
- (C) the name of the attendant who provided services to the individual;
- (D) the beginning and ending dates of the service delivery period;
- (E) the tasks performed for the individual;
- (F) the specific days and times the attendant worked;

(G) the signature of the attendant or another person designated by the attendant, if the provider documents the reason the attendant was unable to complete or sign the time sheet and the name of the person the attendant authorized to sign the time sheet for the attendant, and the date signed;

(H) the signature of the individual or representative or another person designated by the individual or representative, if the provider documents the reason the individual or representative was unable to sign the time sheet and the name of the person the individual or representative authorized to sign the time sheet for the individual, and the date signed verifying the performance and time as documented.

(2) The provider must document any suspension or termination of services, and any IDT meeting held under §44.502 of this subchapter (relating to Convening an Interdisciplinary Team), and must include in the documentation:

- (A) the reason for the IDT meeting;
- (B) the recommendation of the IDT resulting from the meeting; and
- (C) the provider's response to the IDT recommendations.

(3) The provider must document any service plan disagreement and must maintain documentation of the procedures it follows under §44.206 of this chapter (relating to Service Plan and Co-Payment Disagreements) to resolve the disagreement.

(4) The provider must document and maintain documentation of visit by an assessor of need performed in accordance with §44.203 of this chapter (relating to Assessment and Eligibility Determination).

(c) Financial records. The provider must maintain financial records:

(1) to support its billings to DADS for payment under §44.505 of this subchapter (relating to Reimbursement);

(2) to support each individual's co-payment as calculated by the assessor of need under §44.501 of this subchapter (relating to Determining an Individual's Co-Payment), including documentation to support income, exclusions and deductions;

(3) to document reimbursements made by DADS, with records that must include:

- (A) the amount of reimbursement;
- (B) the voucher number;
- (C) the warrant number;
- (D) the date of receipt; and

(E) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the provider's accounting system; and

(4) in accordance with generally accepted accounting principles (GAAP) and DADS procedures.

(d) Required financial records. A provider's financial records must include:

- (1) deposit slips, bank statements, cancelled checks, and receipts;
- (2) purchase orders;
- (3) invoices;
- (4) journals and ledgers;
- (5) time sheets, payroll, and tax records;
- (6) Internal Revenue Service, Department of Labor, and other government records and forms;
- (7) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);
- (8) equipment inventory records;
- (9) records of the provider's internal accounting procedures;
- (10) a chart of accounts, as defined by GAAP; and
- (11) records of company policies.

(e) Subcontractor records. If a provider uses a subcontractor, the provider must maintain records of the subcontractor's activities. The provider must maintain records to support subcontractor claims.

(f) Failure to maintain records. If the provider fails to maintain records in accordance with this section or other applicable DADS requirements, DADS may initiate a corrective action plan and may pursue any appropriate sanction.

§44.505. Reimbursement.

(a) General billing requirements. A provider must bill DADS for services provided to an individual in accordance with §49.41 of this title (relating to Billings and Claims Payment).

(b) Hourly rate. The provider must bill DADS in accordance with the hourly rate negotiated by DADS.



(c) Documentation. The provider must comply with §44.504 of this subchapter (relating to Records) to be eligible for reimbursement from DADS.

(d) Rounding. The provider must bill DADS for services in quarter-hour increments. Time worked that is not an exact quarter-hour must be rounded up to a quarter-hour if it is eight minutes or more, or not billed if it is less than eight minutes.

(e) Allowable tasks. The provider must bill DADS only for the allowable tasks described in §44.304 of this chapter (relating to Allowable and Unallowable Tasks) that comprise services actually delivered to an individual in accordance with the individual's service plan. A provider must not bill DADS for services provided to an individual, through agreement with the individual or otherwise, if DADS did not authorize the services.

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## CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §45.702 and §45.805, concerning protection of individual, initial and annual explanations, and offering access to other services if termination presents a threat to health and safety; and DSA: service delivery, in Chapter 45, Community Living Assistance and Support Services.

### BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to allow a Community Living Assistance and Support Services (CLASS) Program direct services agency (DSA) to provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) (relating to Respite and Dental Treatment), adaptive aids, or nursing to an individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas. Currently, DADS does not permit a DSA to provide services outside the catchment area in which the individual resides. This change to DADS policy will give a DSA the opportunity to help prevent a disruption to the provision of habilitation, out-of-home respite in a camp, adaptive aids, or nursing and help protect the individual's health and welfare while the individual is traveling or staying at a location other than his or her residence. A corresponding change to the rules governing licensure of home and community support services agencies in Chapter 97, Subchapter C, of this title is proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments require a CLASS case management agency (CMA) to, at least annually, inform the individual or legally authorized representative (LAR) that they may request, more than once during an individual plan of care period, that

the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days and provide such services more than once during an individual plan of care period.

The proposed amendments also require a CMA to notify an individual receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area, during a period of 30 consecutive days, that to ensure the continued provision of the service, the individual must, before the 61st day that the individual is at a location outside the catchment area, transfer to a DSA contract for the catchment area in which the individual is receiving the service or return to the catchment area in which the individual resides. Further, the CMA must notify the individual that if he or she receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area. These notifications are required so that an individual will be aware of the limitations on receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside of the catchment area.

Further, because a DSA may not have available resources to provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area in which an individual lives, the proposed amendments establish that a DSA may accept or decline the request of an individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area.

The proposed amendments state that if a DSA declines the request of an individual or LAR, the DSA must inform the individual or LAR of the reasons for declining the request and that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request. If requested by an individual or LAR, the case manager must convene a meeting of the service planning team to discuss the DSA's reasons for declining the request to allow services to be provided outside the catchment area. These changes allow the individual and LAR the opportunity to understand and discuss the DSA's reasons for declining a request to provide a service outside the catchment area.

The proposed amendments further state that a DSA may provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing to the individual during a period of no more than 60 consecutive days. After such a period, the DSA may accept another request from the individual or LAR that the DSA provide these services outside the catchment area only if the individual has returned to the catchment area in which the individual resides and received services in that catchment area. The limitation of a 60-day period and the requirement to return to the catchment area and receive services in that catchment area before another request may be accepted from the DSA are included so that the individual will be available in the catchment area to receive other CLASS Program services as necessary, such as an annual assessment or an in-person visit by the case manager.

Also, so that an individual's case manager will have necessary information about an individual's situation, the proposed amend-

ments require the DSA to notify an individual's case manager, within three days after the DSA begins providing habilitation, out-of-home respite in a camp, adaptive aids, or nursing to the individual outside the catchment area, of the location where the individual is receiving the service, the estimated length of time the individual is expected to be at that location, and contact information for the individual or LAR. Further, the DSA must notify the individual's case manager that the individual has returned to the catchment area in which the individual resides within three business days after becoming aware of the individual's return.

In addition to specifying program provider requirements for delivery of services outside the catchment area in which an individual resides, the proposed amendments clarify language regarding steps a CMA must take if the individual or LAR expresses a desire to transfer to another DSA.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §45.702 requires a CMA to, at least annually, inform the individual or LAR that the individual or LAR may request, more than once during an individual plan of care period, that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days. The proposed amendment also requires a CMA to notify an individual receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area, on or before the 35th day of the period services have been provided outside the catchment area, that to ensure the provision of the service the individual must transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing or return to the catchment area in which the individual resides before the 61st day. Further, the CMA must notify the individual or LAR that if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area.

In addition, if an individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing, the proposed amendment requires the DSA to give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving that catchment area, have the individual or LAR select a CMA and DSA by completing a Selection Determination form, and coordinate the individual's transfer in accordance with §45.401. Further, if requested by an individual or LAR, the case manager must convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area. The proposed amendment also requires the CMA to have documentation that it has provided the oral explanations and information required under §45.702.

The proposed amendment to §45.805 allows a DSA to accept or decline the request of an individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area in which the individual resides.

The proposed amendment further states that a DSA may provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing to the individual during a period of no more than 60 consecutive days. After such a period, the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area only if the individual has returned to the catchment area in which the individual resides and received services in that catchment area. The proposed amendment also states that if a DSA declines the request of an individual or LAR to provide a service outside the catchment area, the DSA must inform the individual or LAR of the reasons for declining the request and that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request. The DSA is also required to inform the individual's case manager, in writing, that the request was declined and the reasons for the decision.

The proposed amendment also requires the DSA to notify an individual's case manager, within three days after the DSA begins providing habilitation, out-of-home respite in a camp, adaptive aids, or nursing to the individual outside the catchment area, of the location where the individual is receiving the service, the estimated length of time the individual is expected to be at that location, and contact information for the individual or LAR. Further, the proposed amendment requires the DSA to notify the individual's case manager that the individual has returned to the catchment area in which the individual resides within three business days after becoming aware of the individual's return. The proposed amendment also requires the DSA to have documentation that it has provided the notifications to the case manager required under §45.805.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new costs on a DSA that are not reimbursed by DADS.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the amendments is the opportunity for a DSA to provide habilitation, out-of-home respite in a camp, adaptive aids, and nursing to an individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides and, therefore, to help protect the individual's health and welfare while the individual is traveling or staying at a location other than his or her residence.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development and Oversight. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R09" in the subject line.

### SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

#### 40 TAC §45.702

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§45.702. Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services if Termination Presents a Threat to Health and Safety.*

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

- (1) infectious and communicable diseases;
- (2) conflicts of interest with CMA staff persons;
- (3) acts of financial impropriety;
- (4) abuse, neglect, and exploitation; and
- (5) deliberate damage of personal possessions.

(b) A case manager must explain the following to the individual and LAR or person actively involved with the individual, orally and in writing, upon notification by DADS that an individual selected the CMA as a program provider as required by §45.212(a)(2)(B), (D), (E), and (F) of this chapter (relating to Process for Enrollment of an Individual) and annually thereafter:

(1) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(2) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(3) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858); and

(4) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §45.707(c)(1) of this chapter (relating to CMA: Quality Management and Complaint Process).

(c) After an individual is enrolled in the CLASS Program, a CMA must ~~at least annually~~:

(1) do the following regarding transfers:

(A) ~~[(+)]~~ at least annually, provide an oral explanation to the individual and LAR or person actively involved with the individual that the individual may transfer to a different CMA or DSA; and

(B) if the individual or LAR expresses a desire for the individual to transfer to a different CMA or DSA:

(i) ~~[(2)]~~ give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(ii) ~~[(3)]~~ have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(iii) ~~[(4)]~~ coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form; and ~~and[-]~~

(2) at least annually:

(A) give the individual or LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(3) at least annually, provide an oral explanation to the individual or LAR that they may request:

(A) that the DSA provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, or nursing while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days;

(B) that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing as described in subparagraph (A) of this paragraph more than once during an IPC period.

(d) If the CMA is notified by the DSA that the individual is receiving habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing outside the catchment area in which the individual resides in accordance with §45.805(g)(1) of this chapter (relating to DSA: Service Delivery), the CMA must:

(1) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area, provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area, that:

(A) to ensure the continued provision of habilitation, out-of-home respite in a camp, adaptive aids, or nursing, the individual must do one of the following before the 61st day:

(i) transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing; or

(ii) return to the catchment area in which the individual resides; and

(B) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, or nursing outside the catchment area; and

(2) if the individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing:

(A) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, or nursing;

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(C) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers).

(e) If an individual requests that the case manager convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area as described in §45.805(h)(1)(B) of this chapter, the case manager must:

(1) convene the meeting to review the reasons the DSA declined the request that was submitted by the DSA; and

(2) facilitate a discussion between the individual or LAR and DSA during the meeting regarding the reasons the DSA declined the request.

(f) [(d)] If the termination of an individual's CLASS Program services in accordance with Subchapter D of this chapter (relating to Transfer, Denial, Suspension, Reduction, and Termination of Services) presents a threat to the individual's health and safety, the CMA must ensure that the case manager offers the individual access to:

(1) alternative long-term services and supports in the community; or

(2) institutional services.

(g) A CMA must have documentation that it provided the oral explanation and information as required under subsections (b), (c)(1)(A), (c)(2) and (3), and (d)(1) of this section and convened a meeting as required under subsection (e) of this section.

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

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302357

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466



## SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

### 40 TAC §45.805

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.805. *DSA: Service Delivery.*

(a) A DSA must ensure that:

(1) each CLASS Program service is provided to an individual in accordance with:

(A) the individual's IPC; and

(B) the individual's IPP for that service; and

(2) an adaptive aid and minor home modification also meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) A DSA must provide licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, habilitation, respite, an adaptive aid, or dental treatment to an individual, even if not included on the individual's IPC, if a registered nurse determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §45.224(a) of this chapter (relating to Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual*.

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

(f) Except as provided in subsection (h) of this section, a DSA may accept or decline the request of an individual or LAR for the DSA to provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, or nursing to the individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas.

(g) If the DSA accepts the request of an individual or LAR as described in subsection (f) of this section, the DSA:

(1) may provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing to the individual outside the catchment area during a period of no more than 60 consecutive days;

(2) must, within three business days after the DSA begins providing services outside the catchment area, notify the individual's case manager of the following:

(A) that the individual is receiving services outside the catchment area in which the individual resides;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the catchment area; and

(D) contact information for the individual or LAR;

(3) must notify the individual's case manager that the individual has returned to the catchment area in which the individual resides within three business days after becoming aware of the individual's return; and

(4) must have documentation that it notified the case manager as required by paragraphs (2) and (3) of this subsection.

(h) If the DSA declines the request of an individual or LAR as described in subsection (f) of this section, the DSA must:

(1) inform the individual or LAR:

(A) of the reasons for declining the request; and

(B) that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request; and

(2) within three business days after declining the request, inform the individual's case manager, in writing, that the request was declined and the reasons for declining the request.

(i) If a DSA has provided habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, or nursing to an individual during a period of 60 consecutive days while the individual is temporarily staying at a location outside the catchment area in which the individual resides, the DSA may accept another request from the individual or LAR that the DSA provide services outside the catchment area only if the individual has returned to the catchment area in which the individual resides and received services in that catchment area.

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 June 10, 2013.

TRD-201302358

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466

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## CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§47.63, 47.71, and 47.89, concerning service delivery, suspensions, and reimbursement, in Chapter 47, Contracting to Provide Primary Home Care.

### BACKGROUND AND PURPOSE

The purpose of the amendments is to authorize a Home and Community Support Services Agency (HCSSA) primary home care (PHC) provider agency to provide attendant services at the request of an individual while the individual is temporarily staying at a location outside of the contracted service delivery area but within the state of Texas. DADS currently does not authorize a provider agency to provide services outside of the area designated in the contract application. The proposed amendments give a provider agency the opportunity to help prevent a disruption in attendant services and help protect the individual's health and welfare while the individual is traveling or staying at a location outside the contracted service delivery area. The provider agency may accept or decline the individual's request for services. A corresponding change to rules governing licensure of an HCSSA in Chapter 97, Subchapter C, of this title is proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments limit the services to a period of no more than 60 consecutive days outside of the provider agency's contracted service delivery area, after which the individual must return to the service delivery area and receive services in that service delivery area before again requesting services outside of the service delivery area. If at the end of the 60 days the individual does not return, DADS transfers the individual to a provider agency of his or her choice that has a contracted service delivery area that includes the new service delivery area to continue receiving services. The proposed amendments detail the process for requesting and receiving services outside of the contracted service delivery area, including limits on the delivery of services, the provider agency's option to accept or decline the request, record keeping, transfer to a different provider agency, and reimbursement. The amendments require service suspension if the provider agency declines an individual's request to provide services outside of the contracted service delivery area and the individual leaves the service delivery area.

The proposed amendments also update terms and cross-references.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §47.63 updates terms and allows a provider to accept or decline the request of an individual to receive services outside the provider agency's contracted service delivery area during a period of no more than 60 consecutive days. The provider must include the services in a service plan and inform the case manager when providing the services and when the individual returns to the contracted service delivery area. If the provider declines the request, the provider must inform the individual of the reasons and that the individual may request a meeting with the case manager and provider to discuss the provider's reasons for declining the service. The amendment also provides that an individual receiving services during 60 consecutive days must return to the contracted service delivery area and receive services before making another request to receive out-of-area services. DADS transfers an individual who has remained outside of the service area for more than 60 consecutive days to a provider of the individual's choice that has a contract for the new service delivery area. Service delivery documentation is amended to clarify requirements for electronic records and signing a time sheet.

The proposed amendment to §47.71 updates terms and cross-references and adds that services must be suspended when a provider declines the request of an individual for provision of services outside of the contracted service delivery area and the individual leaves the service delivery area.

The proposed amendment to §47.89 adds that a provider must not bill DADS for services provided outside the contracted service delivery area unless the service complies with §47.63 (relating to Service Delivery).

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new costs on an HCSSA that are not reimbursed by DADS.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the amendments is the opportunity for a PHC provider agency to provide attendant services while an individual is temporarily staying at a location outside the provider agency's contracted service delivery area in which the individual resides and, therefore, to help protect the individual's health and welfare while the individual is traveling or staying at a location other than the contracted service delivery area.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development and Oversight. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R09" in the subject line.

### SUBCHAPTER E. SERVICE REQUIREMENTS

#### 40 TAC §47.63, §47.71

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §47.63. Service Delivery.

(a) Service interruptions. A service interruption occurs when, on a particular day or time when services are scheduled:

(1) the individual [~~e~~lient] requests that:

(A) no hours of service be provided; or

(B) fewer hours of service than reflected in the service schedule be provided; or

(C) a specific attendant not provide services to the individual [~~e~~lient];

(2) the individual [~~e~~lient] is not at home when services are scheduled;

(3) services are suspended as described in §47.71 of this chapter (relating to Suspensions); or

(4) services are not delivered for other reasons beyond the control of the provider agency, such as acts of nature and other disasters.

(b) Delivery of services.

(1) The provider agency must ensure:

(A) services are delivered according to the service plan described in §47.45 of this chapter (relating to Pre-Initiation Activities);

(B) all authorized and scheduled services are provided to an individual [a client], except in the case of a service interruption, as defined in subsection (a) of this section; and

(C) an individual [a client] does not receive, during a calendar month, more than five times the weekly authorized hours on the [Texas] Department of Aging and Disability Services (DADS) [Human Services' (DHS's)] Authorization for Community Care Services form.

(2) The provider agency must not exceed the weekly authorized hours except in the case of a temporary increase:

(A) due to unusual circumstances and the individual's [client] need; and

(B) requested by the individual [client].

(C) This paragraph does not apply to the circumstances described in subsection (d) of this section.

(c) Service interruption documentation.

(1) In the case of an individual whose services are considered priority [a priority client], the provider agency must document all service interruptions by the 30th day after the beginning of the service interruption.

(2) In the case of an individual whose services are considered non-priority [a non-priority client], the provider agency must document all service interruptions that exceed 14 consecutive days by the 30th day after the day service interruption exceeds 14 consecutive days.

(A) For a fixed service schedule, the service interruption begins on the first day services are scheduled but not delivered.

(B) For a variable service schedule, the service interruption begins the Sunday following the week the individual [client] did not receive all the weekly hours on a service plan approved by the individual [client].

(3) The reason documented must be a reason listed in subsection (a) of this section.

(4) If the provider agency learns of a service interruption after the deadlines listed in paragraphs (1) and (2) of this subsection, the provider agency must document the following as soon as the provider agency learns of the service interruption:

(A) the reason for the service interruption. The reason documented must be a reason listed in subsection (a) of this section;

(B) the reason for the delay in documenting the service interruption; and

(C) the date the provider agency learned of the service interruption.

(d) Service delivery outside the individual's [client's] home but within a provider agency's contracted service delivery area.

(1) The provider agency may develop a service plan that includes services regularly delivered at a location other than the individual's [client's] home.

(2) The service plan must not exceed the weekly hours authorized on DADS [DHS's] Authorization for Community Care Services form.

(3) [(2)] The provider agency may deliver services outside the individual's [client's] home when the service plan does not include the regular delivery of such services.

(4) [(3)] The provider agency:

(A) may deliver services outside the individual's [client's] home only if the individual [client] requests such services.

(B) is not required to pay for expenses incurred as a result of an attendant [by attendants] delivering services outside the individual's [client's] home.

(C) must[:]

[(#)] make a reasonable effort to deliver services at a location other than an individual's [the client's] home when requested by the individual [client];

(D) [(##)] must maintain written justification if the individual's [client's] request was not granted; and

(E) [(###)] must document in the individual's record [client's file]:

(i) [(#)] each instance when the individual [a client] requested services at a location other than the home;

(ii) [(##)] whether the individual's [client's] request was granted;

(iii) [(##)] what services were provided; and

(iv) [(##)] where the services were delivered.

(e) Service delivery outside a provider agency's contracted service delivery area.

(1) The provider agency may develop a service plan that includes, at the request of the individual, services provided while the individual is temporarily staying at a location outside the provider agency's contracted service delivery area but within the state of Texas.

(2) The service plan must not exceed the weekly hours authorized on DADS Authorization for Community Care Services form.

(3) The provider agency may accept or decline the request of an individual for the provision of services while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas.

(A) If the provider agency accepts the individual's request, the provider agency:

(i) may provide services to the individual during a period of no more than 60 consecutive days;

(ii) must, within three days after the provider agency begins providing services to the individual, notify the individual's case manager of the following using the Case Information form:

(I) that the individual is receiving services outside the provider agency's contracted service delivery area;

(II) the location where the individual is receiving services;

(III) the estimated length of time the individual is expected to be outside the contracted service delivery area; and

(IV) contact information for the individual;

(iii) must notify the individual's case manager using the Case Information form that the individual has returned to the provider agency's contracted service delivery area within three working days after becoming aware of the individual's return; and

(iv) is not required to pay for expenses incurred by an attendant delivering services outside the contracted service delivery area.

(B) If the provider agency declines the individual's request, the provider agency must:

(i) inform the individual orally or in writing:

(I) of the reasons for declining the request; and

(II) that the individual may request a meeting with the case manager and the provider agency to discuss the reasons for declining the request; and

(ii) inform the individual's case manager in writing, within three days after declining the request, that the request was declined and the reasons for declining the request.

(4) If an individual receives services outside the provider agency's contracted service delivery area during a period of 60 consecutive days, the individual must return to the contracted service delivery area and receive services in that service delivery area before the provider agency may agree to another request from the individual for the provision of services outside the provider agency's contracted service delivery area.

(5) If the individual intends to remain outside the provider agency's contracted service delivery area for a period of more than 60 consecutive days, DADS transfers the individual to a provider agency selected by the individual that has a contracted service delivery area that includes the area in which the individual is receiving services. DADS coordinates the transfer in accordance with §47.69 of this chapter (relating to Transfers).

(f) [(e)] Service delivery documentation.

(1) The provider agency must document the delivery of services electronically or on a paper timesheet, to include[; including]:

(A) the provider agency name;

(B) the provider agency vendor number;

(C) the attendant's [attendant] name;

(D) the individual's [client] name;

(E) the individual's DADS [DHS client] number;

(F) the specific service delivery period, including month, day, and year, as applicable;

(G) the tasks assigned;

(H) the units of service delivered;

(I) the dates services were delivered; and

(J) certification that the attendant delivered the documented tasks.

(2) [(f)] For electronic service delivery documentation systems, each attendant must enter [person delivering services inputs] a unique identifier to certify the services delivered.

(3) [(g)] For paper service delivery documentation systems, a timesheet must have a specific service delivery period not exceeding one calendar month.

(A) Except as provided in subparagraph (B) of this paragraph, each person delivering services must sign [signs] the timesheet or make a mark representing the attendant's name to certify the services delivered and that the timesheet is correct.

[(f) The attendant must sign his or her name or a mark representing his or her name on the timesheet to certify that it is correct. Initials are not an acceptable substitute for a signature.]

(B) [(H)] An attendant who is unable to sign or mark the timesheet may designate another person to sign the timesheet. The provider agency must maintain written documentation of the:

(i) [(-a-)] reason the attendant is unable to sign or mark the timesheet; and

(ii) [(-b-)] identity of the person authorized to sign the timesheet on behalf of the attendant.

[(2) Paper service delivery documentation must be a single document with a specific service delivery period not exceeding one calendar month.]

(g) [(f)] Documentation of service delivery. The provider agency must:

(1) maintain documentation of service delivery in the individual's record; and [client file.]

(2) [The provider agency must] be able to identify each attendant who delivers services [all attendants delivering tasks] to an individual [the client].

§47.71. Suspensions.

(a) Required suspensions. A provider agency must suspend services if:

(1) an individual temporarily or permanently leaves the provider agency's contracted service delivery area;

(2) the provider declines the request of the individual for the provision of services outside of the provider agency's contracted service delivery area and the individual leaves the service delivery area;

(3) [(2)] the individual moves to a location where services cannot be provided under the PHC Program;

(4) [(3)] the individual dies;

(5) [(4)] the individual is admitted to an institution, which is a:

(A) hospital;

(B) nursing facility;

(C) state supported living center [school];

(D) state hospital;

(E) intermediate care facility serving individuals with an intellectual disability [persons with mental retardation] or [a] related conditions [condition]; or

(F) correctional facility.

(6) [(5)] the individual requests that services end;

(7) [(6)] the Health and Human Services Commission denies the individual's Medicaid eligibility (not applicable to FC services); or

(8) [(7)] the individual or someone in the individual's home exhibits reckless behavior, which may result in imminent danger to the health and safety of the individual, the attendant, or another person, in which case the provider must make an immediate referral to:

(A) the Texas Department of Family and Protective Services or other appropriate protective services agency;

(B) local law enforcement, if appropriate; and



(C) the individual's case manager.

(b) Optional suspensions. The provider agency may suspend services if:

(1) the individual or someone in the individual's home engages in discrimination against a provider or DADS employee in violation of applicable law; or

(2) the individual refuses services for more than 30 consecutive days.

(c) Notification of service suspension. The provider agency must notify the case manager of any suspension by the first working day after the provider agency suspends services. The notice must include:

(1) the date of service suspension;

(2) the reason(s) for the suspension;

(3) the duration of the suspension, if known; and

(4) for a suspension under subsection (a)(8) [~~subsections (a)(7)~~] or (b) of this section, a written explanation of the circumstances surrounding the suspension.

(d) Interdisciplinary Team (IDT) meeting. The provider agency must convene an IDT meeting, as described in §47.49 of this chapter (relating to Interdisciplinary Team), if services are suspended under subsection (a)(8) [~~subsections (a)(7)~~] or (b) of this section.

(e) Resuming services after suspension. This subsection does not apply to subsection (a)(8) [~~subsections (a)(7)~~] or (b)(1) of this section.

(1) A provider agency must resume services after suspension on the earliest of the following:

(A) upon the individual's return home, or the date the provider agency becomes aware of the individual's return home, if applicable;

(B) on the date specified in writing by the case manager;

(C) as a result of a recommendation by the IDT; or

(D) upon the provider agency's [~~provider's~~] receipt of notification from the case manager that the provider agency must resume services pending the outcome of an appeal.

(2) The provider agency must notify the case manager of the date services resume within seven days after that date.

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

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TRD-201302359

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §47.89

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§47.89. *Reimbursement.*

(a) Billing requirements.

(1) A provider must bill for services provided as described in §49.41 of this title (relating to Billings and Claims Payment).

(2) The provider must not bill DADS for:

(A) more hours than an individual's weekly authorization, except when services are delivered as described in §47.63(b)(2) [~~§47.63(a)~~] of this chapter (relating to Service Delivery);

(B) services delivered in a licensed facility, if the facility is required by the license to provide those services; [~~and~~]

(C) services provided outside the contracted service delivery area except if provided in compliance with §47.63(e) of this chapter; and

(D) [~~(C)~~] services or tasks that duplicate any services or tasks provided to the individual by another source.

(b) Hourly rate. The provider must agree to accept the hourly rate authorized by DADS.

(c) Documentation. The provider must maintain the documentation described in this chapter to be eligible for reimbursement.

(d) Rounding. The provider must bill DADS for services in quarter-hour increments, rounding up to the next quarter-hour if the actual time worked is eight minutes or more, and rounding down to the previous quarter hour if the actual time worked is seven minutes or less.

(e) Allowable tasks. The provider must bill DADS only for the tasks described in §47.41 of this chapter (relating to Allowable Tasks).

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

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Kenneth L. Owens

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Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

## SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

### 40 TAC §§48.6026, 48.6080, 48.6096, 48.6112, 48.6114

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§48.6026, 48.6080, and 48.6096, concerning home and community support services agency (HCSSA) qualifications, non-billable time and activities, and service breaks; and new §48.6112 and §48.6114, concerning personal assistance services, adaptive aids, medical supplies, or nursing provided outside the HCSSA contracted service delivery area and HCSSA transfer to a different contracted service delivery area, in Chapter 48, Community Care for Aged and Disabled.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is to authorize an HCSSA community based alternatives (CBA) provider to provide personal assistance services, adaptive aids, medical supplies, or nursing at the request of the individual while the individual is temporarily staying at a location outside of the contracted service delivery area but within the state of Texas. DADS currently does not authorize an HCSSA to provide CBA services outside of the area designated in the HCSSA's contract application. The proposed amendments give an HCSSA the opportunity to help prevent a disruption in personal assistance services, adaptive aids, medical supplies, or nursing and help protect an individual's health and welfare while the individual is traveling or staying at a location outside the contracted service delivery area. The HCSSA may accept or decline the individual's request for services. A corresponding change to the rules governing licensure of an HCSSA in Chapter 97, Subchapter C, of this title is proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments limit the personal attendant services, adaptive aids, medical supplies, or nursing to a period of no more than 60 consecutive days outside of the contracted service delivery area, after which the individual must return to the service delivery area and receive services in that contracted service delivery area before again requesting services outside of the service delivery area. If at the end of the 60 days the individual does not return, DADS transfers the individual to an HCSSA that has a contracted service delivery area that includes the new service delivery area to continue receiving services. The proposed amendments detail the process for requesting and receiving services outside of the HCSSA's contracted service delivery area, including limits on the delivery of services, the HCSSA's option to accept or decline the request, record keeping, transfer to a different HCSSA, and reimbursement.

The amendments also delete the requirement that an HCSSA must have a separate contract in each DADS region in which services are to be provided and delete other contract requirements that duplicate requirements in other rules. The amendments update terms used in the rules.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.6026 provides that an HCSSA must only provide services to individuals in the contracted service delivery area unless services are provided in compliance with new §48.6112 (relating to Personal Assistance Services, Adaptive Aids, Medical Supplies, or Nursing Outside the HCSSA Contracted Service Delivery Area) and deletes the requirements that an HCSSA have a separate contract in each DADS region

in which services are to be delivered. The requirement that the counties in the HCSSA's licensed service area be listed in the contract and that the HCSSA be authorized by the Secretary of State to do business in the state of Texas are deleted because they duplicate requirements in other rules.

The proposed amendment to §48.6080 updates terms and adds to the list of non-billable expenses and activities expenses related to the delivery of personal assistance services, adaptive aids, medical supplies, or nursing outside the contracted service delivery area, including costs for transportation or lodging. An HCSSA must not bill for any services provided outside the area during a period of more than 60 consecutive days.

The proposed amendment to §48.6096 updates terms and adds that an HCSSA is not required to deliver services outside of the contracted service delivery area if it declines an individual's request for services.

Proposed new §48.6112 allows an HCSSA to accept or decline the request of the individual to receive personal assistance services, adaptive aids, medical supplies, or nursing outside the HCSSA's contracted service delivery area, limits the provision of those services to 60 consecutive days, requires the HCSSA to notify the case manager when the individual receives the services and when the individual returns to the contracted service delivery area before the HCSSA may accept another request for services outside of the area. If an HCSSA declines a request, the HCSSA must inform the case manager and individual of the HCSSA's reasons for declining the request and inform the individual that the individual may request a meeting to discuss the reasons.

Proposed new §48.6114 adds that DADS transfers an individual from one HCSSA to another HCSSA if the individual intends to be outside the transferring HCSSA's contracted service delivery area for more than 60 consecutive days unless the individual will be residing in a STAR+PLUS area. The amendment also requires the HCSSAs to coordinate with the case manager and establishes requirements for the receiving HCSSA.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new sections are in effect, enforcing or administering the amendments and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new costs on an HCSSA CBA provider that are not reimbursed by DADS.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments and new sections are in effect, the public benefit expected as a result of enforcing the amendments and new sections is the opportunity for an HCSSA CBA provider to provide personal assistance services, adaptive aids, medical supplies, or nursing to an individual while the individual is temporarily staying at a location outside the HCSSA's contracted service delivery area and, therefore, to help protect the individual's health and welfare

while the individual is traveling or staying at a location outside the contracted service delivery area.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new sections. The amendments and new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development and Oversight. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R09" in the subject line.

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§48.6026. Home and Community Support Services Agency (HCSSA) Qualifications.*

(a) A HCSSA that contracts to provide CBA services must:

(1) maintain a license under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in the licensed home health services category;

(2) only [have a separate contract to] provide CBA services in the contracted service delivery area, unless personal assistance services, adaptive aids, medical supplies, or nursing are provided in compliance with §48.6122 of this chapter (relating to Personal Assistance Services, Adaptive Aids, Medical Supplies, or Nursing Provided Outside the HCSSA Contracted Service Delivery Area) [each DADS region in which services are to be delivered]; and

(3) be in compliance with Chapter 49 of this title (relating to Contracting for Community Care Services);~~[-]~~

~~[(4) have the counties in the DADS contract for CBA services included in the identified licensed service area on file at DADS; and]~~

~~[(5) be authorized by the secretary of state to do business in the State of Texas (if an out-of-state corporation).]~~

(b) A HCSSA that contracts to provide CBA services may maintain a license in the personal assistance services category in addition to the licensed home health services category for the purpose of providing personal assistance services that do not require nurse delegation.

*§48.6080. Non-Billable Time and Activities.*

A HCSSA must not bill the Department of Aging and Disability Services (DADS) for: [The following activities are not considered billable activities under the Community Based Alternatives (CBA) program for Home and Community Support Services agencies:]

(1) supervision of personal care attendants performing personal assistance tasks, unless the attendant is delivering nursing tasks delegated by a registered nurse;

(2) phone calls, letters, or meetings with DADS [Texas Department of Human Services (DHS)] or community resources;

(3) administrative meetings or staff meetings;

(4) in-service training, continuing education, or conferences;

(5) employee conferences or evaluations;

(6) filing claims for services;

(7) traveling to and from an individual's [the participant's] home;

(8) processing paperwork or completing records or reports, except for the annual reassessment;

(9) home modifications, medical supplies, or adaptive aids that are not listed in the CBA Provider Manual as covered items nor approved by authorized DADS [DHS] staff;

(10) collateral contact when that contact is between a HCSSA employee [agency employees] and a person [individuals] providing services to an individual [participants] under a personal service agreement or subcontract [agreements or subcontracts] with the HCSSA [CBA agency];

(11) billing for services that are considered to be mutually exclusive, as identified in §48.6082 of this title (relating to Mutually Exclusive Services);~~[-]~~

(12) any expenses related to providing personal assistance services, adaptive aids, medical supplies, or nursing outside the HCSSA contracted service delivery area, including costs for transportation or lodging; or

(13) personal assistance services, adaptive aids, medical supplies, or nursing provided to an individual outside the HCSSA's contracted service delivery area during a period of more than 60 consecutive days.

*§48.6096. Service Breaks.*

The HCSSA [home and community support services (HCSS) agency] must ensure that any authorized or scheduled personal assistance services are delivered in accordance with the ISP [Individual Service Plan]

unless one of the following occurs [the actions specified in paragraphs (1)-(5) of this section occur]:

- (1) services are automatically suspended;
- (2) services are suspended for cause;
- (3) the individual [participant] is not at home when services are scheduled to be delivered;
- (4) the individual [participant] requests that services not be provided on specific days; [or]
- (5) the individual [participant] agrees to less than the scheduled hours as documented in the record; or[-]
- (6) the individual leaves the HCSSA's contracted service delivery area and the HCSSA does not approve the individual's request for personal assistance services, adaptive aids, medical supplies, or nursing to be delivered outside the contracted service delivery area.

§48.6112. Personal Assistance Services, Adaptive Aids, Medical Supplies, or Nursing Provided Outside the HCSSA Contracted Service Delivery Area.

(a) A HCSSA may accept or decline the request of an individual for the provision of personal assistance services (PAS), adaptive aids, medical supplies, or nursing while the individual is temporarily staying at a location outside the HCSSA's contracted service delivery area but within the state of Texas.

(b) If the HCSSA accepts the request of the individual as described in subsection (a) of this section, the HCSSA:

(1) may provide PAS, adaptive aids, medical supplies, or nursing to the individual outside the HCSSA's contracted service delivery area during a period of no more than 60 consecutive days;

(2) must, within three working days after the HCSSA begins providing PAS, adaptive aids, medical supplies, or nursing to the individual outside the HCSSA's contracted service delivery area, notify the individual's case manager using the Case Information form of the following:

(A) that the individual is receiving services outside the HCSSA's contracted service delivery area;

(B) the location where the individual is receiving services;

(C) the estimated length of time the individual is expected to be outside the HCSSA's contracted service delivery area; and

(D) contact information for the individual; and

(3) must notify the individual's case manager using the Case Information form that the individual has returned to the HCSSA's contracted service delivery area, within three working days after becoming aware of the individual's return.

(c) If an individual receives PAS, adaptive aids, medical supplies, or nursing outside the HCSSA's contracted service delivery area during a period of 60 consecutive days, the individual must return to the HCSSA's contracted service delivery area and receive services in that area before the program provider may agree to another request from the individual to receive services outside the HCSSA's contracted service delivery area.

(d) If a HCSSA declines the request of an individual described in subsection (a) of this section, the HCSSA must:

(1) inform the individual orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual may request a meeting with the case manager and the HCSSA to discuss the reasons for declining the request; and

(2) inform the individual's case manager in writing, within three working days after declining the request, that the request was declined and the reasons for declining the request.

§48.6114. HCSSA Transfer to a Different Contracted Service Delivery Area.

(a) The Department of Aging and Disability Services (DADS) transfers an individual from the HCSSA providing services to another HCSSA, unless the individual will be residing in a STAR+PLUS area, if the individual intends to be outside the transferring HCSSA's contracted service delivery area for more than 60 consecutive days.

(b) The HCSSAs must coordinate with the case manager to negotiate an effective date for the transfer. The case manager sends the Notification of Waiver Services form listing the effective date of the transfer to the HCSSAs and sends a copy of the current individual service plan and the medical necessity/LOC form to the receiving HCSSA.

(c) The receiving HCSSA must:

(1) initiate services to the individual on the effective date of transfer documented on the Notification of Waiver Services form as described in subsection (b) of this section; and

(2) perform a nursing assessment no later than 14 calendar days after the transfer effective date.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4466



## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §51.231 and §51.513, concerning service limitations and non-billable time and activities; and new §51.245 and §51.247, concerning respite services or adaptive aids outside of the contracted service delivery area and Home and Community Support Services Agency (HCSSA) transfer to a different contracted service delivery area, in Chapter 51, Medically Dependent Children Program.

### BACKGROUND AND PURPOSE

The purpose of the amendments is to authorize an HCSSA Medically Dependent Children Program (MDCP) provider to provide respite services and adaptive aids at the request of an individual while the individual is temporarily staying at a location outside of the provider's contracted service delivery area but within the state of Texas. DADS currently does not authorize a provider to provide services outside of the area designated in the con-

tract application. The proposed amendments give a provider the opportunity to help prevent a disruption in respite services and adaptive aids and help protect an individual's health and welfare while the individual is traveling or staying at a location other than his or her residence. The provider may accept or decline the individual's request for services outside the provider's contracted service delivery area. A corresponding change to the rules governing licensure of an HCSSA in Chapter 97, Subchapter C, of this title is proposed elsewhere in this issue of the *Texas Register*.

The proposed amendments limit the respite services and adaptive aids to no more than 60 consecutive days outside of the contracted service delivery area, after which the individual must return to the provider's service delivery area and receive services in that area before again requesting services outside of the provider's service delivery area. If at the end of the 60 days the individual does not return, DADS transfers the individual to a provider that has a service delivery area that includes the new service delivery area to continue receiving services. The proposed amendments detail the process for requesting and receiving respite services outside of the provider's contracted service delivery area, including limits on the delivery of services, the provider's option to accept or decline the request, record keeping, transfer to a different provider, and reimbursement.

The proposed amendments add definitions of terms and update other terminology.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §51.231 adds that an individual may receive respite services and adaptive aids outside the provider's contracted service delivery area during a period of no more than 60 consecutive days.

Proposed new §51.245 allows a provider to accept or decline the request of an individual to receive respite services outside the provider's contracted service delivery area and requires a provider to notify the case manager when the provider begins providing services. The amendment also limits the provision of those services to 60 consecutive days after which the individual must return to the contracted service delivery area and receive services before again requesting services outside of the service area. If a provider declines a request, the provider must inform the individual of the provider's reasons for declining the request and that the individual may request a meeting to discuss the reasons. The provider must also inform the case manager.

Proposed new §51.247 adds that DADS transfers an individual from one provider to another if the individual intends to be outside the contracted service delivery area during a period of more than 60 consecutive days and requires the providers to coordinate with the case manager. The amendment establishes service initiation and nursing assessment requirements for the receiving provider.

The proposed amendment to §51.513 adds to a list non-billable expenses related to the delivery of respite services and adaptive aids outside of the contracted service delivery area, including costs for transportation or lodging. A provider must not bill for any services provided outside the area for more than 60 consecutive days.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new sections are in effect, enforcing or administering the amend-

ments and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposed amendments do not impose any new costs on an HCSSA that are not reimbursed by DADS.

#### PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the proposed amendments and new sections are in effect, the public benefit expected as a result of enforcing the amendments and new sections is the opportunity for an HCSSA provider to provide respite services and adaptive aids to an individual while the individual is temporarily staying at a location outside the contracted service delivery area and, therefore, to help protect the individual's health and welfare while the individual is traveling or staying at a location outside the contracted service delivery area.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new sections. The amendments and new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development and Oversight. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R09" in the subject line.

### SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES DIVISION 3. SERVICES

#### 40 TAC §§51.231, 51.245, 51.247

#### STATUTORY AUTHORITY

The amendment and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which pro-

vides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment and new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§51.231. Service Limitations.*

(a) General. The individual or the individual's parent or guardian may not ask the provider to provide MDCP services to any other household member while serving the individual in the individual's residence.

(b) Respite.

(1) Respite services may not be provided in a setting in which identical services are already being provided.

(2) Subject to an exception granted by DADS in accordance with §51.232 of this division (relating to Exception to Service Limit), an individual may receive a maximum of 2,096 hours of respite during an IPC year, of which 144 hours (six days) may be used for facility based respite.

(3) The service limit described in paragraph (2) of this subsection is in effect through August 31, 2013.

(4) Effective September 1, 2013, an individual may be admitted to facility-based respite for a maximum of 29 days during an IPC year with the amount of respite other than facility-based respite subject to the IPC cost limit as described in §51.203(7) of this subchapter (relating to Eligibility Requirements). If the DADS case manager receives information demonstrating the need of the parent or guardian to admit the individual to facility-based respite in excess of 29 days during an IPC year, the DADS case manager determines whether providing facility-based respite in excess of the limit is necessary for the IPC to meet the criteria described in §51.217(b) of this subchapter (relating to Individual Plan of Care).

(5) Respite may be provided to an individual outside the provider's contracted service delivery area during a period of no more than 60 consecutive days, as described in §51.245 of this division (relating to Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area).

(c) Adjunct support services.

(1) Subject to an exception granted by DADS in accordance with §51.232 of this division, an individual may receive a maximum of 1,875 hours of adjunct support services during an IPC year.

(2) The service limit described in paragraph (1) of this subsection is in effect through August 31, 2013.

(3) Adjunct support services may be used only when the primary caregiver is working, attending job training, or attending school.

(d) Adaptive aids.

(1) An individual may receive adaptive aids having a maximum cost of \$4,000 during an IPC year.

(2) The service limit described in paragraph (1) of this subsection is not subject to an exception.

(3) DADS does not reimburse for an adaptive aid costing less than \$100.

(4) Adaptive aids may be provided to an individual outside the provider's contracted service delivery area during a period of no more than 60 consecutive days, as described in §51.245 of this division.

(e) Minor home modifications.

(1) An individual may receive minor home modifications during the individual's lifetime having a maximum cost of \$7,500, which may be paid in one or more IPC years.

(2) An individual may receive, during an IPC year, a maximum of \$300 for repair and maintenance of a minor home modification.

(f) Transition assistance services.

(1) An individual may access transition assistance services only once in the individual's lifetime.

(2) The cost ceiling for transition assistance services is \$2,500.

§51.245. Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area.

(a) A HCSSA provider may accept or decline a request for the provision of respite services or adaptive aids to an individual while the individual is temporarily staying at a location outside the provider's contracted service delivery area but within the state of Texas.

(b) If the provider accepts the request of an individual as described in subsection (a) of this section, the provider:

(1) may provide respite services or adaptive aids to the individual during a period of no more than 60 consecutive days;

(2) must, within three working days after the provider begins providing respite or adaptive aids to the individual, notify the individual's case manager using the Case Information form of the following:

(A) that the individual is receiving respite services or adaptive aids outside the provider's contracted service delivery area;

(B) the location where the individual is receiving respite services or adaptive aids;

(C) the estimated length of time the individual is expected to be outside the provider's contracted service delivery area;

(D) contact information for the individual; and

(3) must notify the case manager using the Case Information form that the individual has returned to the provider's contracted service delivery area, within three working days after becoming aware of the individual's return.

(c) If an individual receives respite services or adaptive aids outside the provider's contracted service area during a period of 60 consecutive days, the individual must return to the provider's contracted service delivery area and receive services in that area before the program provider may agree to another request from the individual for the provision of services outside the provider's contracted service delivery area.

(d) If a HCSSA declines the request of an individual's parent or guardian as described in subsection (a) of this section, the HCSSA must:

(1) inform the individual's parent or guardian orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual's parent or guardian may request a meeting with the case manager and the provider to discuss the reasons for declining the request; and

(2) inform the individual's case manager in writing, within three days after declining the request, that the request was declined and the reasons for declining the request.

§51.247. HCSSA Transfer to a Different Contracted Service Delivery Area.

(a) The Department of Aging and Disability Services transfers an individual from the provider providing respite services or adaptive aids to another provider if the individual intends to be outside the transferring provider's contracted service delivery area for more than 60 consecutive days.

(b) The providers must coordinate with the case manager to negotiate an effective date for the transfer. The case manager sends the Notification of Waiver Services form listing the effective date of the transfer to the providers and sends a copy of the current individual plan of care and the medical necessity/LOC form to the receiving provider.

(c) The receiving HCSSA must:

(1) initiate services to the individual on the effective date of transfer documented on the Notification of Waiver Services form as described in subsection (b) of this section; and

(2) perform a nursing assessment no later than 14 calendar days after the transfer effective date.

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 June 10, 2013.

TRD-201302362

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466



## SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

### 40 TAC §51.513

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §51.513. Non-billable Time and Activities.

A provider must not bill for and DADS will not approve payment for:

(1) more than 16 hours of services provided by the same person within a 24-hour period;

(2) services provided to any family member other than the individual;

(3) time spent filing claims for services;

(4) travel to and from the individual's home;

(5) processing paperwork or completing records or reports;

(6) services not approved by authorized DADS staff;

(7) the cost of making a home visit that is not included in the bid (for example, to perform orientation or make adjustments to an adaptive aid);

(8) the delivery charge for an adaptive aid;

(9) office equipment, supplies, and other office expenses, including:

(A) fax machines;

(B) printers and copiers;

(C) scanners; and

(D) Internet and e-mail services;

(10) a repair covered under a warranty;

(11) a minor home modification that does not pass inspection;

(12) interest or other charges on past due expenses;

(13) property or income taxes; [ø€]

(14) insurance coverage or benefits payments, such as:

(A) life insurance;

(B) accidental insurance;

(C) death benefits;

(D) burial policies;

(E) funeral expenses; or

(F) home insurance coverage or deductibles;[-]

(15) any expenses related to having respite services or adaptive aids provided outside the provider's contracted service delivery area, including costs for transportation or lodging; or

(16) respite services or adaptive aids provided to an individual outside the provider's contracted service delivery area during a period of more than 60 consecutive days.

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

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302363

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-4466

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## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §97.2, Definitions; §97.29, Application and Issuance of an Alternate Delivery Site License; §97.201, Applicability; §97.244, Administrator Qualifications and Conditions and Supervising Nurse Qualifications; §97.248, Volunteers; §97.257, Medicare Certification Optional; §97.288, Coordination of Services; §97.322, Standards for Alternate Delivery Sites; and §97.602, Administrative Penalties; new §§97.801, 97.810 - 97.813, 97.820 - 97.823, 97.830 - 97.834, 97.840 - 97.846, 97.850 - 97.861, 97.870, 97.871, and 97.880 in new Subchapter H, concerning Standards Specific to Agencies Licensed to Provide Hospice Services; and the repeal of §97.403, Standards Specific to Agencies Licensed to Provide Hospice Services, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

### BACKGROUND AND PURPOSE

The Department of Aging and Disability Services (DADS) initiated this project in response to the Centers for Medicare and Medicaid Services' (CMS) revised hospice conditions of participation (CoPs) at 42 Code of Federal Regulations (CFR), Part 418, effective December 2, 2008. DADS also included amendments to recognize a boarding home facility as an independent living environment where a client may reside and receive HC-SSA services.

The rule proposal includes repealing §97.403, Standards Specific to Agencies Licensed to Provide Hospice Services, from Chapter 97, Subchapter D, and replacing it with a new Subchapter H to better organize the information in the proposed new rule sections. The rule sections in new Subchapter H are based on the federal hospice CoPs and on Texas state laws regulating services provided by hospice licensed staff and hospice aides.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.2 adds and updates hospice-related definitions; adds "boarding home facility" to the definitions; clarifies definitions related to a hospice inpatient unit; and clarifies the definition for "physician."

The proposed amendment to §97.29 updates and clarifies procedures related to a hospice applying for an alternate delivery site license and for DADS to process the application and conduct surveys for a hospice inpatient unit.

The proposed amendment to §97.201 adds a reference to applicable hospice standards in new Subchapter H.

The proposed amendment to §97.244 adds qualifications for a hospice administrator based on the hospice CoPs and updates a reference to 40 TAC Chapter 99, Denial or Refusal of License.

The proposed amendment to §97.248 updates rules for volunteers, including a reference to a hospice CoP, and deletes federal requirements that apply only to a Medicare-certified hospice agency.

The proposed amendment to §97.257 adds new subsection (b) regarding CMS' approval of a hospice agency.

The proposed amendment to §97.288 clarifies procedures for coordination of care and adds "boarding home facility" as a place where a client resides.

The proposed amendment to §97.322 updates and adds references to applicable state and federal hospice requirements, deletes rules duplicated elsewhere in the chapter, and reformats the rule.

The proposed repeal of §97.403 removes the rule to allow reorganization of the standards specific to HCSSAs licensed to provide hospice services in new Subchapter H. The new rules in Subchapter H are primarily based on the revised hospice CoPs at 42 CFR Part 418.

The proposed amendment to §97.602 updates rule cites listed on the administrative penalty tables based on the rule amendments, repeal, and new rules in this proposal and adds rules cites based on other proposed amendments to §97.220, Service Areas.

Proposed new §97.801 establishes the applicability of the rules in Subchapter H and defines certain terms in the subchapter.

Proposed new §97.810 establishes standards for a hospice initial assessment.

Proposed new §97.811 establishes standards for a hospice comprehensive assessment.

Proposed new §97.812 establishes standards for a hospice to update a comprehensive assessment.

Proposed new §97.813 requires a hospice to include data elements in its comprehensive assessment.

Proposed new §97.820 establishes standards for a hospice interdisciplinary team.

Proposed new §97.821 establishes standards for a hospice plan of care.

Proposed new §97.822 establishes standards for a hospice to review and revise a plan of care.

Proposed new §97.823 establishes additional standards for a hospice to coordinate care.

Proposed new §97.830 establishes standards for hospice core services.

Proposed new §97.831 establishes standards for hospice physician services.

Proposed new §97.832 establishes standards for hospice nursing services.

Proposed new §97.833 establishes standards for hospice medical social services.

Proposed new §97.834 establishes standards for hospice counseling services.

Proposed new §97.840 establishes the standards for providing hospice non-core services.

Proposed new §97.841 establishes standards for physical therapy (PT), occupational therapy (OT), and speech-language pathology (SLP) services.

Proposed new §97.842 establishes standards for hospice aide services.

Proposed new §97.843 establishes qualifications for a hospice aide.



Proposed new §97.844 establishes standards for hospice home-maker services.

Proposed new §97.845 establishes qualifications for a hospice homemaker.

Proposed new §97.846 establishes hospice standards for a client also receiving services under a Medicaid personal care benefit.

Proposed new §97.850 establishes standards for a hospice to organize, manage, and administer its hospice program.

Proposed new §97.851 establishes standards for a person licensed to provide skilled nursing, PT, OT, SLP and medical social services.

Proposed new §97.852 establishes standards for a hospice governing body and administrator.

Proposed new §97.853 establishes standards for a hospice infection control program.

Proposed new §97.854 establishes standards for a hospice that contracts for services.

Proposed new §97.855 establishes standards for a hospice to conduct criminal background checks.

Proposed new §97.856 establishes standards for a hospice that operates one or more alternate delivery sites.

Proposed new §97.857 establishes standards for the orientation and training of hospice staff.

Proposed new §97.858 establishes standards for a hospice medical director.

Proposed new §97.859 establishes standards for a hospice to discharge or transfer a client.

Proposed new §97.860 establishes standards for providing drugs and biologicals, medical supplies and appliances, and durable medical equipment.

Proposed new §97.861 establishes standards for a hospice to make inpatient care available.

Proposed new §97.870 establishes standards for nurse staffing and nurse call systems.

Proposed new §97.871 establishes physical environment standards, including Life Safety Code and emergency preparedness, in an inpatient unit.

Proposed new §97.880 establishes standards for a hospice to provide services to a client residing in a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, enforcing or administering the amendments, new sections, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeal will not have an adverse economic effect on small businesses or micro-businesses because the rules do not

require an agency to hire new staff, purchase equipment, or incur any additional costs.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is having updated licensing standards for hospice agencies that are similar to the revised federal hospice CoPs.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The amendments, new sections, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Rosalind Nelson-Gamblin at (512) 438-4962 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R005, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R005" in the subject line.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §97.2

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

##### §97.2. Definitions.

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

(1) Accessible and flexible services--Services that [which] are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) Advanced practice nurse--A registered nurse who is approved by the Texas Board of Nursing to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the Texas Board of Nursing. See the Texas Board of Nursing's definition of advanced practice nurse in 22 TAC §221.1 [~~concerning definitions~~].

(6) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(7) Affiliate--With respect to an applicant or license holder that [, which] is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent [5.0%], subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent [5.0%].

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(8) Agency--A home and community support services agency.

(9) Alternate delivery site (ADS)--A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for [~~For~~] the purposes of this definition, means it is not the parent agency [~~the hospice's principal place of business is the parent office for the hospice~~];

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(10) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(11) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(12) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(13) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(14) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(15) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care. [Family includes a significant other(s).]

(16) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(17) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(18) [(46)] Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(19) [(47)] Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(20) [(48)] Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are co-

ordinated effectively and support the objectives outlined in the plan of care or care plan.

(21) [(49)] Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(22) [(20)] Certified home health services--Home health services that are provided by a certified agency.

(23) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(24) [(21)] CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(25) [(22)] Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(26) [(23)] Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) [(e.g., vaccine)] if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(27) [(24)] Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(28) [(25)] CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(29) [(26)] Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(30) [(27)] Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(31) [(28)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(32) [(29)] Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(33) [(30)] Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(34) [(31)] DADS--Department of Aging and Disability Services.

(35) [(32)] Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(36) [(33)] Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(37) [(34)] Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(38) [(35)] Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(39) [(36)] Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(40) [(37)] Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a [freestanding] hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(41) [(38)] End stage renal disease (ESRD)--For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

[(39) Freestanding hospice--An agency that provides hospice services to clients of the agency who are residing at the agency's physical location including inpatient and respite care.]

(42) [(40)] Functional need--Needs of the individual that require services without regard to diagnosis or label.

(43) [(41)] Health assessment--A determination of a client's physical and mental status through inventory of systems.

(44) [(42)] Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(45) [(43)] Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(46) [(44)] Home health medication aide--An unlicensed [A] person issued a permit by DADS to administer medication to a client [permitted] under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(47) [(45)] Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

- (A) nursing, including blood pressure monitoring and diabetes treatment;
- (B) physical, occupational, speech, or respiratory therapy;
- (C) medical social service;
- (D) intravenous therapy;
- (E) dialysis;
- (F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;
- (G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or
- (H) nutritional counseling.

(48) [(46)] Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(49) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(50) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(51) [(47)] Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

- (A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;
- (B) are provided by a medically directed interdisciplinary team; and
- (C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(52) [(48)] Independent living environment--A client's residence, which may include a group home, [ø] foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(53) [(49)] Individual and family [~~Individual/family~~] choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(54) [(50)] Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(55) [(51)] Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(56) [(52)] IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(57) [(53)] JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(58) [(54)] Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(59) Legally authorized representative (LAR)--A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(60) [(55)] Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(61) [(56)] Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(62) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(63) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(64) [(57)] Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(65) [(58)] Medication administration record--A record used to document the administration of a client's medications.

(66) [(59)] Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(67) [(60)] Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(68) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(69) [(64)] Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(70) [(62)] Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(71) [(63)] Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(72) [(64)] Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(73) [(65)] Operating hours--The days of the week and the hours of day an agency's [agency] place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(74) [(66)] Original active client record--A record composed first-hand for a client currently receiving services.

(75) [(67)] Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(76) [(68)] Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(77) [(69)] Parent company--A person, other than an individual, who has a direct 100 percent [100%] ownership interest in the owner of an agency.

(78) [(70)] Person--An individual, corporation, or association.

(79) [(71)] Person with a disclosable interest--Any person who owns at least a 5.0 percent [5.0%] interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(80) [(72)] Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(81) [(73)] Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(82) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(83) Pharmacy--A facility defined in the Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(84) [(74)] Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(85) [(75)] Physician--This term includes a person who is: [A person who holds a doctor of medicine or doctor of osteopathy degree and is currently licensed and practicing medicine under the laws of the state of Texas, Oklahoma, New Mexico, Arkansas, or Louisiana.]

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(86) [(76)] Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(87) [(77)] Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(88) [(78)] Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(89) [(79)] Plan of care--The written orders of a practitioner for a client who requires skilled services.

(90) [(80)] Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(91) [(81)] Preparedness--Actions taken in anticipation of a disaster.

(92) [(82)] Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(93) [(83)] Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(94) [(84)] Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(95) [(85)] Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(96) [(86)] Registered nurse (RN)--A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(97) [(87)] Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(98) [(88)] Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(99) [(89)] Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(100) [(90)] Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(101) [(91)] Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(102) [(92)] Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(103) Restraint--A restraint is:

(A) A manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) A drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(104) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(105) [(93)] Section--A reference to a specific rule in this chapter.

(106) [(94)] Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(107) [(95)] Skilled services--Services in accordance with a plan of care that require the skills of:

- (A) a registered nurse;
- (B) a licensed vocational nurse;
- (C) a physical therapist;
- (D) an occupational therapist;
- (E) a respiratory therapist;
- (F) a speech-language pathologist;
- (G) an audiologist;
- (H) a social worker; or
- (I) a dietitian.

(108) [(96)] Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(109) [(97)] Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(110) [(98)] Statute--The Texas Health and Safety Code, Chapter 142.

(111) [(99)] Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(112) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(113) [(400)] Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(114) [(401)] Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(115) [(402)] Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(116) [(403)] Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(117) [(404)] Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(118) [(405)] Unlicensed person--A person [An individual who is] not licensed as a health care provider [professional]. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(119) [(406)] Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(120) [(407)] Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(121) [(408)] Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(122) [(409)] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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

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General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

### 40 TAC §97.29

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.29. *Application and Issuance of an Alternate Delivery Site License.*

(a) An agency with a [current] license to provide hospice services may qualify for an alternate delivery site (ADS) license if the parent agency:

(1) is [found to be] in substantial compliance with the statute and this chapter; and

(2) has no enforcement action pending against its [the] license.

(b) An [Upon request, DADS furnishes a parent] agency may obtain [with] an application [packet] for an ADS [alternate delivery site] license on DADS website. If needed, an applicant can use information provided on DADS website to call DADS to obtain an application by mail. On the application, an agency may request to operate an inpatient unit at the alternate delivery site location.

(c) An agency must submit to DADS a complete and correct application [pæket] and the required license fee specified in §97.3 of this chapter (relating to License Fees) for an ADS [alternate delivery site] in accordance with instructions provided with the application [pæket]. A complete and correct application [pæket] includes all documents and information that DADS requests as part of the application process.

(d) After an agency submits an application for an ADS with an inpatient unit, the agency must contact the DADS Architectural Unit to request a Life Safety Code survey. Before DADS considers whether the application is complete, DADS must determine an agency's compliance with the Life Safety Code requirements in Subchapter H, Division 7 of this chapter (relating to Hospice Inpatient Units).

(e) [(4)] DADS reviews an application [pæket] for an ADS license [alternate delivery site] to determine whether it is complete and correct.

(1) DADS processes an application [pæket] for an alternate delivery site license according to the time frames in §97.31 of this subchapter [chapter] (relating to Time Frames for Processing and Issuing a License).

(2) If an agency receives a written notice from DADS that some or all of the documents, information, or the license fee required by this section is missing or incomplete, the agency must submit the required information to DADS postmarked no later than 30 days after the date of the notice. If an agency fails to submit the required information postmarked no later than [within] 30 days after the notice date, DADS considers the application for an ADS [alternate delivery site] license incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(f) [(e)] A designated survey office reviews [conducts a review of] an agency's application for an ADS license and [request to establish an alternate delivery site. The survey office] makes a recommendation to DADS Home and Community Support Services Agencies licensing unit whether to approve or deny the application [alternate delivery site request]. The DADS licensing unit approves or denies the agency's application.

(g) [(f)] [If an agency provides licensed-only hospice services, DADS approves or denies the application for an alternate delivery site after considering the designated survey office's recommendation.] If DADS denies an agency's [the] application, DADS sends the agency a written notice:

(1) informing the agency of its decision; and

(2) providing the agency with an opportunity to appeal its decision through a formal hearing process as described in §97.601 of this chapter (relating to Enforcement Actions).

(h) After DADS issues a license for an ADS with an inpatient unit, the agency must, after providing inpatient services to a client, submit the Notification of Readiness for a Health Survey of a Hospice Inpatient Unit (DADS Form 2020-A), to the designated survey office. DADS conducts an initial licensure health survey to review the standards specified in Subchapter H, Division 7 of this chapter that a DADS Life Safety Code surveyor did not review during the initial Life Safety Code survey.

(i) An agency is not required to request an initial licensure health survey of an ADS with an inpatient unit if the agency is exempt from the health survey as specified in §97.503 of this chapter (relating to Exemption From a Survey). To demonstrate that it is exempt, the agency must send the accreditation documentation from JCAHO

or CHAP to the DADS designated survey office no later than seven days after the agency receives the accreditation documentation.

(j) If an agency receives accreditation documentation from JCAHO or CHAP after the agency submits a written request to DADS for an initial licensure health survey, the agency may demonstrate that it is exempt from the survey by sending the accreditation documentation to the DADS designated survey office before DADS arrives at the agency to conduct an initial health survey.

(k) [(g)] A Medicare-certified hospice agency must also submit a request to CMS for approval of an ADS, including an alternate delivery site with an inpatient unit. CMS approves or denies the request [alternate delivery site if an agency is licensed to provide licensed and certified hospice services].

(l) [(h)] An ADS [alternate delivery site] license expires on the same [expiration] date [as] the parent agency's license expires. The[; and the] agency may renew its ADS license [it] with the parent agency's license.

(m) [(i)] DADS mails an ADS [alternate delivery site] license to the parent agency. The agency [alternate delivery site] must post the ADS license in a conspicuous place on the licensed ADS [alternate delivery site] premises.

(n) An ADS must comply with the statute and this chapter, including the applicable additional standards for hospice agencies in Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) and §97.322 of this chapter (relating to Standards for Alternate Delivery Sites). A Medicare-certified hospice agency's ADS must also comply with the applicable federal rules and regulations for hospice agencies in 42 CFR Part 418, Hospice Care.

(j) An alternate delivery site must comply with §97.403 of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) and §97.322 of this chapter (relating to Standards for Alternate Delivery Sites).

(k) The designated survey office conducts a survey after issuance of the license to verify compliance with §97.403 and §97.322 of this chapter.

(l) The designated survey office may recommend that a licensed alternate delivery site seek a license as a parent agency, under but not exclusive of the following conditions:

(1) the alternate delivery site is the hospice's principal place of business as defined in §97.2 of this chapter (relating to Definitions); or

(2) the alternate delivery site is located outside the geographical area served by the parent agency.]

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

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SUBCHAPTER C. MINIMUM STANDARDS  
FOR ALL HOME AND COMMUNITY SUPPORT  
SERVICES AGENCIES

DIVISION 1. GENERAL PROVISIONS

40 TAC §97.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.201. *Applicability.*

(a) This subchapter applies to a home and community support services agency providing licensed home health services or licensed and certified home health services with and without home dialysis designation, hospice services, or personal assistance services.

(b) In addition to the minimum standards in this subchapter, an agency must also comply with applicable standards in Subchapter D of this chapter (relating to Additional Standards Specific to License Category and Specific to Special Services) and Subchapter H of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

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

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DIVISION 3. AGENCY ADMINISTRATION

40 TAC §§97.244, 97.248, 97.257

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendments implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.244. *Administrator Qualifications and Conditions and Supervising Nurse Qualifications.*

(a) Administrator qualifications.

(1) For an agency licensed to provide licensed home health services, licensed and certified home health services, or hospice services, the administrator and the alternate administrator must:

(A) be a licensed physician, registered nurse, licensed social worker, licensed therapist, or licensed nursing home administrator with at least one year of management or supervisory experience in a health-related setting, such as:

- (i) a home and community support services agency;
- (ii) a hospital;
- (iii) a nursing facility;
- (iv) a hospice;
- (v) an outpatient rehabilitation center;
- (vi) a psychiatric facility;
- (vii) an intermediate care facility for individuals with an intellectual disability [~~persons with mental retardation~~] or related conditions; or

(viii) a licensed health care delivery setting providing services for individuals with functional disabilities; or

(B) have a high school diploma or a general equivalency degree (GED) with at least two years of management or supervisory experience in a health-related setting, such as:

- (i) a home and community support services agency;
- (ii) a hospital;
- (iii) a nursing facility;
- (iv) a hospice;
- (v) an outpatient rehabilitation center;
- (vi) a psychiatric facility;
- (vii) an intermediate care facility for individuals with an intellectual disability [~~persons with mental retardation~~] or related conditions; or

(viii) a licensed health care delivery setting providing services for individuals with functional disabilities.

(2) For an agency licensed to provide hospice services, in addition to the qualifications listed in paragraph (1)(A) or (B) of this subsection, the administrator and the alternate administrator must:

(A) be a hospice employee; and

(B) have any additional education and experience required by the hospice's governing body as specified in the agency's job description.

(3) [(2)] For an agency licensed to provide only personal assistance services, the administrator and the alternate administrator must meet at least one of the following qualifications:

(A) have a high school diploma or a GED with at least one year experience or training in caring for individuals with functional disabilities;

(B) have completed two years of full-time study at an accredited college or university in a health-related field; or

(C) meet the qualifications listed in paragraph (1)(A) or (B) of this subsection.

(b) Administrator conditions.

(1) An administrator and alternate administrator must be able to read, write, and comprehend English.

(2) An administrator and alternate administrator designated as an administrator or alternate administrator for the first time on or after December 1, 2006, must meet the initial educational training requirements specified in §97.259 of this subchapter (relating to Initial Educational Training in Administration of Agencies).

(3) An administrator and alternate administrator designated as an administrator or alternate administrator before December 1, 2006, must meet the continuing education requirements specified in §97.260 of this subchapter (relating to Continuing Education in Administration of Agencies).

(4) A person is not eligible to be the administrator or alternate administrator of any agency if the person was the administrator of an agency cited with a violation that resulted in DADS taking enforcement action against the agency while the person was the administrator of the cited agency.

(A) This paragraph applies for 12 months after the date of the enforcement action.

(B) For purposes of this paragraph, enforcement action means license revocation, suspension, emergency suspension of a license, denial of an application for a license, or the imposition of an injunction but does not include administrative or civil penalties.

(C) If DADS prevails in one enforcement action against the agency and also proceeds with, but does not prevail in, another enforcement action based on some or all of the same violations, this paragraph does not apply.

(5) An administrator and alternate administrator must not be convicted of an offense described in Chapter 99 of this title (relating to Denial or Refusal of License [Criminal Convictions Barring Facility Licensure]) during the time frames described in that chapter.

(c) Supervising nurse qualifications.

(1) For an agency without a home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) be a registered nurse (RN) licensed in Texas or in accordance with the Texas Board of Nursing rules for Nurse Licensure Compact (NLC); and

(B) have at least one year experience as an RN within the last 36 months.

(2) For an agency with home dialysis designation, a supervising nurse and alternate supervising nurse must each:

(A) be an RN licensed in Texas or in accordance with the Texas Board of Nursing rules for NLC, and:

(i) have at least three years of current experience in hemodialysis; or

(ii) have at least two years of experience as an RN and hold a current certification from a nationally recognized board in nephrology nursing or hemodialysis; or

(B) be a nephrologist or physician with training or demonstrated experience in the care of ESRD clients.

§97.248. *Volunteers.*

(a) This section applies to all licensed agencies. However, agencies [licensed and] certified by CMS to provide hospice services also must comply with 42 CFR [Code of Federal Regulations], §418.78 [§418.70], Conditions of Participation--Volunteers.

(b) If an agency uses volunteers, the agency must use volunteers in defined roles under the supervision of a designated agency employee.

(1) A volunteer must meet the same requirements and standards in this chapter that apply to agency employees performing [doing] the same activities[; unless the volunteer is exempt under this chapter from certain requirements or standards].

(2) An agency may use volunteers [Volunteers may be used] in administrative and direct client care roles.

(3) Volunteers must document services provided to a client and, if applicable, services provided to the client's family. [The agency must document the level of volunteer activity.]

[(4) The agency must record expansion of care and services achieved through the use of volunteers, including type of services and the time worked.]

§97.257. *Medicare Certification Optional.*

(a) An agency that applies for the category of licensed and certified home health services must comply with the regulations in the Medicare Conditions of Participation for Home Health Agencies, 42 CFR [Code of Federal Regulations (CFR)], Part 484, pending approval of certification granted by CMS. [An agency providing hospice services and applying for participation in the Medicare program must comply with the Medicare Conditions of Participation for Hospice Services, 42 CFR, Part 418.]

[(b)] After DADS receives [Upon DADS' receipt of] written approval from CMS, DADS amends [will amend] the licensing status of the agency to include the licensed and certified home health services category. [The agency must then comply with §97.402 of this chapter (relating to Standards Specific to Licensed and Certified Home Health Services).]

(b) An agency providing hospice services and applying for participation in the Medicare program must comply with the Medicare Conditions of Participation for Hospice Care, 42 CFR Part 418, pending approval of certification granted by CMS. After DADS receives written approval from CMS, DADS enters the hospice provider number issued by CMS into its Home and Community Support Services Agencies database but does not amend the hospice services category on the license.

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

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## DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

### 40 TAC §97.288

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

#### *§97.288. Coordination of Services.*

(a) An agency must adopt and enforce a written policy regarding coordination of services to ensure the ~~[that requires]~~ effective ~~exchange of information, reporting, and coordination of client services among:~~ [care with all service providers involved in the care of a client, including physicians, contracted health care professionals, and other agencies.]

(1) all agency personnel providing care and services, whether the care and services are provided directly or under arrangement;

(2) the agency and other providers of health care services involved in the care of a client, if known by the agency; and

(3) the agency and a licensed facility, group home, foster home, or boarding home facility in which a client resides.

(b) The agency must include documentation ~~[document the steps taken to meet subsection (a) of this section]~~ in the client record of coordination of services as specified in subsection (a) of this section.

(c) In this section, other providers of health care services involved in the care of a client may include:

- (1) a physician;
- (2) another agency;
- (3) an adult day care center;
- (4) an outpatient facility; and
- (5) a managed care organization.

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

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## DIVISION 5. BRANCH OFFICES AND ALTERNATE DELIVERY SITES

### 40 TAC §97.322

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

#### *§97.322. Standards for Alternate Delivery Sites.*

(a) An alternate delivery site (ADS) must comply with the statute and this chapter, including the additional standards in Subchapter H [§97.403] of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

(b) If certified by CMS, an ADS must comply with the applicable federal rules and regulations for hospice agencies in 42 CFR, Part 418, Hospice Care.

~~[(b) An alternate delivery site must independently meet §97.403(c), (f)(1), and (i) of this chapter, and §97.301 of this chapter (relating to Client Records).]~~

~~[(c) An alternate delivery site must be established within the parent agency's service area.]~~

~~[(1) An alternate delivery site must not provide services outside its licensed service area.]~~

~~[(2) An alternate delivery site must maintain adequate staff to provide services and to supervise the provision of services within the service area.]~~

~~[(3) An alternate delivery site may expand its service area at any time during the licensure period.]~~

~~[(A) Unless exempted under subparagraph (B) of this paragraph, an alternate delivery site must submit to DADS a written notice to expand its service area at least 30 days before the expansion. The notice must include:]~~

~~[(i) revised boundaries of the alternate delivery site's original service area;]~~

~~[(ii) the effective date of the expansion; and]~~

[(iii) an updated list of management and supervisory personnel (including names), if changes are made.]

[(B) An agency is exempt from the 30-day written notice requirement under subparagraph (A) of this paragraph if DADS determines that an emergency exists that would impact client health and safety. An agency must notify DADS immediately of a possible emergency. DADS determines if an exemption can be granted.]

[(4) An alternate delivery site may reduce its service area at any time during the licensure period by sending DADS written notification of the reduction, revised boundaries of the alternate delivery site's original service area, and the effective date of the reduction.]

(c) [(d)] A parent agency and an ADS [alternate delivery site] must meet the following requirements:

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse must conduct an on-site supervisory visit to the ADS [alternate delivery site] at least monthly. The parent agency may visit the ADS [alternate delivery site] more frequently considering the size of the service area provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

[(2) The original active clinical record must be kept at the alternate delivery site.]

(2) [(3)] The parent agency must approve all ADS [alternate delivery site] policies and procedures. This approval must be documented and filed in the parent agency and ADS [alternate delivery sites].

[(e) DADS issues or renews an alternate delivery site license for applicants who meet the requirements of this section.]

(d) [(4)] Issuance or renewal of an ADS [alternate delivery site] license is contingent upon compliance by the parent agency and ADS with the statute and this chapter [by the parent agency and alternate delivery site].

(1) [(2)] DADS may take enforcement action against a parent agency license for an ADS' [alternate delivery site's] failure to comply with the statute or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(2) [(3)] Revocation, suspension, denial or surrender of a parent agency license results [will result] in the same revocation, suspension, denial or surrender of all ADS [alternate delivery site] licenses of the parent agency.

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

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Kenneth L. Owens

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Department of Aging and Disability Services

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## SUBCHAPTER D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

### 40 TAC §97.403

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The repeal implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.403. *Standards Specific to Agencies Licensed to Provide Hospice Services.*

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

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## SUBCHAPTER F. ENFORCEMENT

### 40 TAC §97.602

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.602. *Administrative Penalties.*

(a) Assessing penalties. DADS may assess an administrative penalty against a person who violates:

- (1) the statute;
- (2) a provision in this chapter for which a penalty may be assessed; or

(3) Texas Occupations Code, §102.001 (relating to Soliciting Patients; Offense) or §102.006 (relating to Failure to Disclose; Offense), if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. DADS assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, DADS considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, DADS provides an agency with an opportunity to correct a violation in accordance with the time frames established in §97.527(g)(2) of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) DADS may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) DADS may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) DADS does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. DADS may assess an administrative penalty without providing an agency with an opportunity to correct a violation if DADS determines that the violation:

- (1) results in serious harm to or death of a client;
- (2) constitutes a serious threat to the health or safety of a client;
- (3) substantially limits the agency's capacity to provide care;
- (4) involves the provisions of Texas Human Resources Code, Chapter 102, Rights of the Elderly;
- (5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by DADS;

(B) refuses to allow a representative of DADS to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(D) willfully interferes with a representative of DADS preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by DADS under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from DADS that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code, §142.0145, DADS assesses an administrative penalty of \$500 for a violation of §97.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) DADS assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) DADS may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(2)(D)

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is \$500 - \$1,000 per violation.

(B) A Severity Level B violation is a violation that:

- (i) results in serious harm to or death of a client;
- (ii) constitutes an actual serious threat to the health or safety of a client; or
- (iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

- (i) results in serious harm to or death of a client is \$1,000;
- (ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000; and
- (iii) substantially limits the agency's capacity to provide care is \$500 - \$750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which DADS may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) DADS may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(3)(E)

(i) Violations for which DADS may assess an administrative penalty of \$500.

(1) DADS may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to an agency. The notice includes:

- (A) a brief summary of the violation;
- (B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept DADS determination not later than 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts DADS determination, the DADS commissioner or the DADS commissioner's

designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept DADS determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the agency of DADS determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute, §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and [40 TAC] Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

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

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## SUBCHAPTER H. STANDARDS SPECIFIC TO AGENCIES LICENSED TO PROVIDE HOSPICE SERVICES

### DIVISION 1. HOSPICE GENERAL PROVISIONS

#### 40 TAC §97.801

##### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new section implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.801. Subchapter H Applicability.

(a) This subchapter applies to an agency licensed with the hospice services category. An agency licensed to provide hospice services must adopt and enforce written policies in accordance with this subchapter.

(b) A hospice that provides inpatient care directly in its own inpatient unit must comply with the additional standards in Division 7 of this subchapter (relating to Hospice Inpatient Units).

(c) A hospice that provides hospice care to a resident of a skilled nursing facility, nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions must comply with the additional standards in Division 8 of this subchapter (relating to Hospices that Provide Hospice Care to Residents of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions).

(d) A Medicare-certified hospice agency must comply with the Medicare Conditions of Participation in 42 CFR, Part 418, Hospice Care.

(e) A person who is not licensed to provide hospice services may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services.

(f) For the purposes of this subchapter, the term "attending practitioner":

(1) includes a physician or an advanced practice nurse identified by a hospice client at the time he or she elects to receive hospice services as having the most significant role in the determination and delivery of the client's medical care; and

(2) is synonymous with "attending physician," as defined in 42 CFR §418.3.

(g) For the purposes of this subchapter, election of hospice care occurs on the effective date included in a client's hospice election statement. A hospice election statement must include:

(1) identification of the hospice that will provide care to the client;

(2) the client's or the client's legal representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness;

(3) acknowledgement by Medicare beneficiaries that certain Medicare services, as described in 42 CFR §418.24(d), are waived by the election;

(4) the effective date of the election of hospice care, which may be later but not earlier than the date of the client's or the client's legal representative's signature and may be the first day of hospice care or a later date; and

(5) the signature of the client or legal representative.

(h) For the purposes of this subchapter, the term "comprehensive assessment" means a thorough evaluation of a client's physical, psychosocial, emotional, and spiritual status related to the terminal illness and related conditions. This includes a thorough evaluation of the caregiver's and family's willingness and capability to care for the client.

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

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Kenneth L. Owens

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## DIVISION 2. INITIAL AND COMPREHENSIVE ASSESSMENT OF A HOSPICE CLIENT

### 40 TAC §§97.810 - 97.813

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

#### *§97.810. Hospice Initial Assessment.*

(a) A hospice registered nurse (RN) must complete an initial assessment of a client where hospice services will be delivered within 48 hours after the election of hospice care, unless the client's physician, the client, or the client's legal representative requests that the initial assessment be completed in less than 48 hours.

(b) The initial assessment must assess a client's immediate physical, psychosocial, and emotional status related to the terminal illness and related conditions. The information gathered must be used by the hospice to begin the plan of care and to provide care and services to treat a client's and a client's family's immediate care and support needs.

#### *§97.811. Hospice Comprehensive Assessment.*

(a) The hospice must conduct and document a client-specific comprehensive assessment that identifies a client's need for hospice care and services. The comprehensive assessment must:

(1) identify the client's physical, psychosocial, emotional, and spiritual needs related to the terminal illness that must be addressed in order to promote the client's well-being, comfort, and dignity throughout the dying process;

(2) include all areas of hospice care related to the palliation and management of the client's terminal illness and related conditions;

(3) accurately reflect the client's health status at the time of the comprehensive assessment and include information to establish and monitor a plan of care; and

(4) identify the caregiver's and family's willingness and capability to care for the client.

(b) The hospice interdisciplinary team, in consultation with the client's attending practitioner, if any, must complete the comprehensive assessment no later than 5 days after the election of hospice care.

(c) The comprehensive assessment must take into consideration the following factors:

(1) the nature of the condition causing admission, including the presence or lack of objective data and the client's subjective complaints;

(2) complications and risk factors that could affect care planning;

(3) the client's functional status, including the client's ability to understand and participate in the client's own care;

(4) the imminence of the client's death;

(5) the severity of the client's symptoms;

(6) a review of all of the client's prescription and over-the-counter drugs, herbal remedies, and other alternative treatments that could affect drug therapy, to identify the following:

(A) the effectiveness of drug therapy;

(B) drug side effects;

(C) actual or potential drug interactions;

(D) duplicate drug therapy; and

(E) drug therapy currently associated with laboratory monitoring;

(7) an initial bereavement assessment of the needs of the client's family and other persons that:

(A) focuses on the social, spiritual, and cultural factors that may impact their ability to cope with the client's death; and

(B) gathers information that must be incorporated into the plan of care and considered in the bereavement plan of care; and

(8) the need for the hospice to refer the client or the client family member to appropriate health professionals for further evaluation.

§97.812. Update of the Hospice Comprehensive Assessment.

(a) The hospice interdisciplinary team, in collaboration with a client's attending practitioner, if any, must update the client's comprehensive assessment as frequently as the condition of the client requires, but no less than every 15 days.

(b) The update of the comprehensive assessment must include:

(1) changes that have taken place since the initial assessment;

(2) information on the client's progress toward desired outcomes; and

(3) a reassessment of the client's response to care.

§97.813. Hospice Client Outcome Measures.

(a) The comprehensive assessment must include data elements that allow the hospice to measure client outcomes. The hospice must measure and document data in the same way for all clients.

(b) The data elements must:

(1) consider aspects of care related to hospice and palliation;

(2) be an integral part of the comprehensive assessment;

(3) be documented by the hospice in a systematic and retrievable way for each client;

(4) be used by the hospice in individual client care planning and in the coordination of a client's services; and

(5) be used in the aggregate for the hospice's quality assessment and performance improvement program.

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

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### DIVISION 3. HOSPICE INTERDISCIPLINARY TEAM, CARE PLANNING, AND COORDINATION OF SERVICES

#### 40 TAC §§97.820 - 97.823

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.820. Hospice Interdisciplinary Team.

(a) A hospice must designate an interdisciplinary team (IDT) composed of persons who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of a hospice client and family facing terminal illness and bereavement. The IDT members must provide the care and services offered by the hospice and all of the members of the IDT must supervise the care and services the hospice provides.

(b) An IDT must include persons who are qualified and competent to practice in the following professional roles:

(1) a physician who is an employee or under contract with the hospice, who may also be the hospice medical director or physician designee;

(2) a registered nurse (RN);

(3) a social worker; and

(4) a pastoral or other counselor.



(c) The hospice must designate an RN who is a member of the client's IDT to provide coordination of care and to ensure continuous assessment of the client's and family's needs and implementation of the interdisciplinary plan of care.

(d) A hospice may have more than one IDT. If the hospice has more than one IDT, the hospice must identify the IDT specifically designated to establish policies governing the day-to-day provision of hospice care and services.

§97.821. Hospice Plan of Care.

(a) A hospice must designate an interdisciplinary team (IDT) to prepare a written plan of care for a client in consultation with the client's attending practitioner, if any, the client or the client's legal representative, and the primary caregiver, if any of them so desire.

(b) The IDT must develop an individualized written plan of care for each client. The plan of care must reflect client and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments.

(c) The hospice must provide care and services to a client and the client's family in accordance with an individualized written plan of care established by the hospice IDT.

(d) The client's plan of care must include all services necessary for the palliation and management of the terminal illness and related conditions. The plan of care must include:

(1) interventions to manage pain and symptoms;

(2) a detailed statement of the scope and frequency of services necessary to meet the specific client and family needs;

(3) measurable outcomes anticipated from implementing and coordinating the plan of care;

(4) drugs and treatments necessary to meet the needs of the client;

(5) medical supplies and equipment necessary to meet the needs of the client; and

(6) the IDT's documentation in the client record of the client's or the client's legal representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's policies.

(e) The hospice must ensure that the client and the client's primary caregiver receives education and training provided by hospice staff as appropriate to the client's and the client's primary caregiver's responsibilities for providing the care and services specified in the client's plan of care.

§97.822. Review of the Hospice Plan of Care.

(a) A hospice interdisciplinary team, in collaboration with a client's attending practitioner, if any, must review, revise and document the individualized plan of care as frequently as the client's condition requires, but no less than every 15 days.

(b) A revised plan of care must include information from the client's updated comprehensive assessment and must note the client's progress toward outcomes and goals specified in the plan of care.

§97.823. Coordination of Services by the Hospice.

In addition to the requirements in §97.288 of this chapter (relating to Coordination of Services), a hospice must develop and maintain a system of communication and integration in accordance with its written policy on coordination of services. The policy must:

(1) ensure that the interdisciplinary team maintains responsibility for directing, coordinating, and supervising the care and services provided to a client;

(2) provide for and ensure the ongoing sharing of information between all hospice personnel providing care and services in all settings, whether the care and services are provided directly or under contract; and

(3) provide for an ongoing sharing of information with other non-hospice health care providers furnishing services unrelated to the terminal illness and related conditions.

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

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## DIVISION 4. HOSPICE CORE SERVICES

### 40 TAC §§97.830 - 97.834

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

§97.830. Provision of Hospice Core Services.

(a) A hospice must routinely provide substantially all core services directly by hospice employees in a manner consistent with accepted standards of practice. A hospice must provide the following core services:

(1) physician services;

(2) nursing services;

(3) medical social services; and

(4) counseling services.

(b) A hospice may contract for physician services as specified in §97.831 of this division (relating to Hospice Physician Services).

(c) A hospice may use contracted staff if necessary to supplement hospice employees to meet the needs of clients under extraordinary or other non-routine circumstances. A Medicare-certified hospice may also enter into a written contract with another Medicare-certified

hospice to provide core services if necessary to supplement hospice employees to meet the needs of a client. The contracting hospice must maintain professional management responsibility for the services provided in accordance with §97.854 of this subchapter (relating to Hospice Professional Management Responsibility). Circumstances under which the hospice may enter into a written contract for the provision of core services include:

- (1) unanticipated periods of high client loads;
- (2) staffing shortages due to illness or other short-term temporary staffing situations that could interrupt client care; and
- (3) temporary travel of a client outside of the hospice's service area.

§97.831. Hospice Physician Services.

(a) The hospice medical director, physician employees, and contracted physicians of the hospice, in conjunction with a client's attending practitioner, if any, are responsible for the palliation and management of a client's terminal illness and related conditions.

(b) A physician employee or a contracted physician must function under the supervision of the hospice medical director.

(c) A physician employee or a contracted physician must meet the requirement in subsection (a) of this section by either providing physician services directly or by coordinating a client's care with the attending practitioner.

(d) If an attending practitioner is unavailable, the medical director, a hospice physician employee, or a contracted physician is responsible for meeting the medical needs of the client.

§97.832. Hospice Nursing Services.

(a) A hospice must provide nursing services by or under the supervision of a registered nurse (RN). An RN must ensure that the nursing needs of a client are met as identified in the client's initial assessment, comprehensive assessment, and updated assessments.

(b) An advanced practice nurse providing nursing services to a client and acting within the nurse's scope of practice may write orders for the client in accordance with a hospice's written policies and applicable state law, including the Texas Occupations Code, Chapter 157, Authority of Physician to Delegate Certain Medical Acts; Texas Occupations Code, Chapter 301, Nurses; and Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act, and Chapter 483, Dangerous Drugs.

(c) A hospice may provide highly specialized nursing services under contract if the hospice provides such nursing services to a client so infrequently that providing them by a hospice employee would be impracticable and prohibitively expensive. A hospice may determine that a nursing service, such as complex wound care, infusion specialties, and pediatric nursing, is highly specialized by the nature of the service and the level of nursing skill required to be proficient in the service.

§97.833. Hospice Medical Social Services.

(a) Medical social services must be provided to a client by a qualified social worker. A qualified hospice social worker must meet one of the following requirements:

- (1) active licensure in the state of Texas as a master social worker (MSW) and one year of social work experience in a health care setting; or
- (2) active licensure in the state of Texas as a baccalaureate social worker, one year of social work experience in a health care setting, and if employed by a hospice after December 2, 2008, must be supervised by a qualified MSW.

(b) A qualified licensed baccalaureate social worker employed by a hospice before December 2, 2008, is exempt from the MSW supervision requirement.

(c) Medical social services must be provided under the direction of a physician.

(d) The social work services provided must be based on:

- (1) the client's and family's needs as identified in the client's psychosocial assessment; and
- (2) the client's and family's acceptance of these services.

§97.834. Hospice Counseling Services.

(a) Counseling services must be available to a client and family to assist the client and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process.

(b) Counseling services must include bereavement, dietary, and spiritual counseling.

(1) Bereavement counseling. Bereavement counseling means emotional, psychosocial, and spiritual support and services provided before and after the death of the client to assist with issues related to grief, loss, and adjustment. A hospice must have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience or education in grief or loss counseling. A hospice must:

(A) develop a bereavement plan of care that notes the kind of bereavement services to be offered to the client's family and other persons and the frequency of service delivery;

(B) make bereavement services available to a client's family and other persons in the bereavement plan of care for up to one year following the death of the client;

(C) extend bereavement counseling to residents of a skilled nursing facility, a nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions when appropriate and as identified in the bereavement plan of care; and

(D) ensure that bereavement services reflect the needs of the bereaved.

(2) Dietary counseling. Dietary counseling means education and interventions provided to a client and family regarding appropriate nutritional intake as a hospice client's condition progresses. Dietary counseling, when identified in the plan of care, must be performed by a qualified person. A qualified person includes a dietitian, nutritionist, or registered nurse. A person that provides dietary counseling must be appropriately trained and qualified to address and assure that the specific dietary needs of a client are met.

(3) Spiritual counseling. A hospice must provide spiritual counseling that meets the client's and the client's family's spiritual needs in accordance with their acceptance of this service and in a manner consistent with their beliefs and desires. A hospice must:

(A) provide an assessment of the client's and family's spiritual needs;

(B) make all reasonable efforts to the best of the hospice's ability to facilitate visits by local clergy, a pastoral counselor, or other persons who can support a client's spiritual needs; and

(C) advise the client and family of the availability of spiritual counseling services.

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

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## DIVISION 5. HOSPICE NON-CORE SERVICES

### 40 TAC §§97.840 - 97.846

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

#### §97.840. Provision of Hospice Non-Core Services.

(a) A hospice must provide the following non-core services in a manner consistent with accepted standards of practice:

- (1) physical therapy services;
- (2) occupational therapy services;
- (3) speech-language pathology services;
- (4) hospice aide and hospice homemaker services; and
- (5) volunteers.

(b) A hospice must provide non-core services directly or through a written contract.

#### §97.841. Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services.

Physical therapy services, occupational therapy services, and speech-language pathology services must be available and, when provided, offered by the hospice in a manner consistent with accepted standards of practice.

#### §97.842. Hospice Aide Services.

(a) Hospice aide services must be provided by a hospice aide who meets the training and competency evaluation requirements or the competency evaluation requirements specified in §97.843 of this subchapter (relating to Hospice Aide Qualifications).

(b) A client's hospice aide services must be:

- (1) ordered by the designated interdisciplinary team (IDT);

(2) included in the client's plan of care;

(3) performed by a hospice aide in accordance with state law and applicable rules, including 22 TAC, Part 11, Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments), and 22 TAC, Part 11, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments For Clients with Stable and Predictable Conditions); and

(4) consistent with a hospice aide's documented training and competency skills.

(c) A registered nurse (RN) who is a member of a client's designated IDT must assign a hospice aide to a specific client. An RN who is responsible for the supervision of a hospice aide as specified in subsection (d) of this section must prepare written client-care instructions for the hospice aide. The duties of a hospice aide include:

(1) providing hands-on personal care;

(2) performing simple procedures as an extension of therapy or nursing services;

(3) assisting with ambulation or exercises;

(4) assisting with self-administered medication;

(5) reporting changes in a client's medical, nursing, rehabilitative, and social needs to an RN as the changes relate to the client's plan of care and the hospice's quality assessment and improvement activities; and

(6) completing client record documentation in compliance with the hospice's policies and procedures.

(d) An RN must make an on-site visit to a client's home to supervise the hospice aide services at least every 14 days to assess the quality of care and services provided by the hospice aide and to ensure that services ordered by the hospice IDT meet the client's needs. The hospice aide does not have to be present during this visit.

(1) If the RN notes an area of concern in the care provided by the aide, the RN must make an on-site visit to the location where the client is receiving care to observe and assess the hospice aide while the aide performs care.

(2) If, during the on-site visit to observe the hospice aide, the RN confirms an area of concern in the aide's skills, the hospice must ensure that the aide completes a competency evaluation in accordance with §97.843 of this subchapter.

(e) An RN must make an annual on-site visit to the location where a hospice client is receiving care to observe and assess each hospice aide while the aide performs care. During this on-site visit, the RN must assess the aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria including:

(1) following the client's plan of care for completion of tasks assigned to the hospice aide by an RN;

(2) creating successful interpersonal relationships with the client and the client's family;

(3) demonstrating competency with assigned tasks;

(4) complying with infection control policies and procedures; and

(5) reporting changes in the client's condition.

#### §97.843. Hospice Aide Qualifications.

(a) A hospice must use a qualified hospice aide to provide hospice aide services. A qualified hospice aide is a person who has successfully completed:

(1) a training program and competency evaluation program that complies with the requirements in subsections (c) and (d) of this section; or

(2) a competency evaluation program that complies with the requirements in subsection (d) of this section.

(b) A person who has not provided home health or hospice aide services for compensation in an agency during the most recent continuous period of 24 consecutive months must successfully complete the programs described in subsection (a)(1) of this section or the program described in subsection (a)(2) of this section before providing hospice aide services.

(c) A hospice aide training program must address each of the subject areas listed in paragraph (1) of this subsection through classroom and supervised practical training totaling at least 75 hours. At least 16 hours must be devoted to supervised practical training. At least 16 hours of classroom training must be completed before the supervised practical training begins.

(1) Subject areas that must be addressed in a hospice aide training program include:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) observation, reporting, and documentation of a client's status and the care or service provided;

(C) reading and recording temperature, pulse, and respiration;

(D) basic infection control procedures;

(E) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(F) maintenance of a clean, safe, and healthy environment;

(G) recognizing emergencies and the knowledge of emergency procedures and their application;

(H) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(I) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(J) safe transfer techniques and ambulation;

(K) normal range of motion and positioning;

(L) adequate nutrition and fluid intake; and

(M) other tasks that the hospice may choose to have an aide perform. The hospice must train hospice aides, as needed, for skills not listed in subparagraph (I) of this paragraph.

(2) The classroom training of hospice aides and the supervision of hospice aides during supervised practical training must be conducted by or under the general supervision of an RN who possesses a minimum of two years of nursing experience, at least one of which must be in the provision of home health or hospice care. Other persons, such as a physical therapist, occupational therapist, medical social worker, and speech-language pathologist may be used to provide instruction under the supervision of a qualified RN who maintains overall responsibility for the training.

(3) An agency must maintain documentation that demonstrates that its hospice aide training program meets the requirements in this subsection. Documentation must include a description of how additional skills, beyond the basic skills listed in paragraph (1) of this subsection, are taught and tested if the agency requires a hospice aide to perform more complex tasks.

(d) A hospice aide competency evaluation program must address each of the subject areas listed in paragraphs (2) and (3) of this subsection.

(1) An RN, in consultation with the other persons described in subsection (c)(2) of this section, must perform the competency evaluation.

(2) The RN must observe and evaluate the hospice aide's performance of tasks with a client in the following areas:

(A) communication skills, including the ability to read, write, and verbally report clinical information to clients, caregivers, and other hospice staff;

(B) reading and recording temperature, pulse, and respiration;

(C) appropriate and safe techniques for performing personal hygiene and grooming tasks, including:

(i) bed bath;

(ii) sponge, tub, and shower bath;

(iii) hair shampoo in sink, tub, and bed;

(iv) nail and skin care;

(v) oral hygiene; and

(vi) toileting and elimination;

(D) safe transfer techniques and ambulation; and

(E) normal range of motion and positioning.

(3) The RN must evaluate a hospice aide's performance of each of the tasks listed in this paragraph by requiring the aide to submit to a written examination, an oral examination, or by observing the hospice aide's performance with a client. The tasks must include:

(A) observing, reporting, and documenting client status and the care or service provided;

(B) basic infection control procedures;

(C) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(D) maintaining a clean, safe, and healthy environment;

(E) recognizing emergencies and knowing emergency procedures and their application;

(F) the physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for a client and his or her privacy and property;

(G) adequate nutrition and fluid intake; and

(H) other tasks the hospice may choose to have the hospice aide perform. The hospice must evaluate the competency of a hospice aide, as needed, for skills not listed in paragraph (2)(C) of this subsection.

(4) A hospice aide has not successfully completed a competency evaluation program if the aide has an unsatisfactory rating in more than one subject area listed in paragraphs (2) and (3) of this subsection.

(5) If a hospice aide receives an unsatisfactory rating in any of the subject areas listed in paragraphs (2) and (3) of this subsection, the aide must not perform that task without direct supervision by an RN until after:

(A) the aide receives training in the task for which the aide was evaluated as unsatisfactory; and

(B) successfully completes a subsequent competency evaluation with a satisfactory rating on the task.

(6) An agency must maintain documentation that its hospice aide competency evaluation program meets the requirements in this subsection. The agency's documentation of a hospice aide's competency evaluation must demonstrate the aide's competency to provide services to a client that exceed the basic skills taught and tested before the aide is assigned to care for a client who requires more complex services.

(e) A hospice aide must receive at least 12 hours of in-service training during each 12-month period. The agency may provide the 12 hours of in-service training during the 12 month calendar year, or within 12 months after a hospice aide's employment or contract anniversary date.

(1) The in-service training must be supervised by an RN.

(2) An agency may provide hospice aide in-service training supervised by an RN while the aide is providing care to a client. The RN must document the exact new skill or theory taught in the client's residence and the duration of the training. The in-service training provided in a client's residence must not be a repetition of a hospice aide's competency in a basic skill.

(3) An agency must maintain documentation that demonstrates the agency meets the hospice aide in-service training requirements in this subsection.

(f) An agency that hires or contracts to use a hospice aide who completes a training program and competency evaluation program or a competency evaluation program provided by another agency or a person who is not licensed as an agency must ensure that the programs or program completed comply with the requirements in subsection (c) and (d) of this section.

(g) A Medicare-certified hospice agency must also comply with 42 CFR §418.76(b) and 42 CFR §418.76(f).

§97.844. Hospice Homemaker Services.

(a) Homemaker services must be provided by a qualified hospice homemaker as described in §97.845 of this subchapter (relating to Hospice Homemaker Qualifications).

(b) A member of a client's designated interdisciplinary team (IDT) must coordinate and supervise the homemaker services provided

and prepare written instructions for the duties a hospice homemaker performs.

(c) Hospice homemaker services may include assistance in maintaining a safe and healthy environment and services to enable the client and the client's family to carry out the hospice treatment plan. Hospice homemaker services do not include providing personal care or any hands-on services.

(d) A hospice homemaker must report all concerns about a client or the client's family to the member of the IDT responsible for coordinating the hospice homemaker services.

§97.845. Hospice Homemaker Qualifications.

(a) A hospice must use a qualified hospice homemaker to provide hospice homemaker services. A qualified hospice homemaker is a person who:

(1) successfully completes an agency's hospice orientation and training as specified in subsection (b) of this section; or

(2) is a qualified hospice aide as described in §97.843 of this subchapter (relating to Hospice Aide Qualifications).

(b) The orientation for a hospice homemaker must address the needs and concerns of a client and a client's family who are coping with a terminal illness. The training for a hospice homemaker must include:

(1) assisting in maintaining a safe and healthy environment for a client and the client's family; and

(2) providing homemaker services to help the client and the client's family to carry out the treatment plan.

(c) If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to a Medicare-certified hospice agency.

§97.846. Services Provided Under a State Medicaid Personal Care Benefit.

(a) If a client receives services under a state Medicaid personal care benefit, a hospice may use the services provided under the Medicaid personal care benefit to the extent the hospice would routinely use the services of a hospice client's family in implementing the client's plan of care.

(b) The hospice must coordinate its hospice aide and homemaker services with the Medicaid personal care benefit to ensure that the client receives the hospice aide and homemaker services the client needs.

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

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DIVISION 6. HOSPICE ORGANIZATION AND  
ADMINISTRATION OF SERVICES

40 TAC §§97.850 - 97.861

## STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

### §97.850. Organization and Administration of Hospice Services.

(a) A hospice must organize, manage, and administer its hospice program to provide hospice care and support services to a client, the client's caregivers, and the client's family that are necessary for the palliation and management of a client's terminal illness and related conditions. A hospice must provide hospice care and support services that:

- (1) optimize the client's comfort and dignity; and
- (2) are consistent with the client's and the client's family's needs and goals with priority given to the client's needs and goals.

(b) Hospice services may be provided in the client's residence or independent living environment and, when needed, in a hospice inpatient unit or in a Medicare/Medicaid-certified facility where the hospice makes inpatient care available under arrangement.

(c) A hospice must be primarily engaged in providing the following care and services and must do so in a manner that is consistent with accepted standards of practice:

- (1) physician services;
- (2) nursing services;
- (3) medical social services;
- (4) counseling services, including bereavement, dietary, and spiritual counseling;
- (5) physical therapy, occupational therapy, and speech-language pathology services;
- (6) hospice aide and hospice homemaker services;
- (7) volunteer services;
- (8) short-term inpatient care; and
- (9) medical supplies and appliances, durable medical equipment, and drugs and biologicals.

(d) A hospice must make the following services routinely available 24 hours a day, seven days a week:

- (1) nursing services;
- (2) physician services; and
- (3) drugs and biologicals.

(e) A hospice must make the following services available 24 hours a day when reasonable and necessary to meet the client's and the client's family's needs:

- (1) medical social services;

(2) counseling services, including bereavement, dietary, and spiritual counseling;

(3) physical therapy, occupational therapy, and speech-language pathology services;

(4) hospice aide and hospice homemaker services;

(5) volunteer services;

(6) short-term inpatient care; and

(7) medical supplies and appliances and durable medical equipment.

(f) A Medicare-certified hospice may not discontinue or reduce care provided to a Medicare or Medicaid beneficiary because of the beneficiary's inability to pay for the care.

### §97.851. Hospice Services Provided by a Licensed Person.

(a) Services provided by a licensed person directly or under contract by a hospice must be authorized, delivered, and supervised only by a qualified licensed person who practices under the hospice's policies and procedures. For the purpose of this section, services provided by a licensed person include skilled nursing care, physical therapy, occupational therapy, speech language pathology, and medical social services.

(b) A licensed person providing hospice services directly or under contract must:

(1) actively participate in the coordination of all aspects of a client's hospice care, in accordance with accepted standards of practice, including participating in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to client and family counseling and education; and

(2) participate in the hospice's quality assessment and performance improvement program and hospice-sponsored in-service training.

### §97.852. Hospice Governing Body and Administrator.

(a) The hospice must have a governing body that assumes full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement.

(b) The governing body must appoint an administrator who:

(1) meets the qualifications and conditions specified in §97.244(a)(1) and (2) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications); and

(2) reports to the governing body or persons serving as the governing body.

### §97.853. Hospice Infection Control Program.

(a) In addition to the requirements in §97.285 of this chapter (relating to Infection Control), a hospice must maintain an effective infection control program that protects clients, families, visitors, and hospice personnel by preventing and controlling infections and communicable diseases.

(b) A hospice must follow accepted standards of practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions.

(c) A hospice must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that is an integral part of the hospice's quality assessment and performance improvement program. The infection control program must include:

(1) a method of identifying infectious and communicable disease problems; and

(2) a plan for implementing the appropriate actions that are expected to result in improvement and disease prevention.

(d) A hospice must provide infection control education to employees, volunteers, contract staff, clients, and family members and other caregivers.

§97.854. Hospice Professional Management Responsibility.

(a) A hospice that has a written contract with another agency, person, or organization to furnish services must retain administrative and financial management and oversight of staff and services for all contracted services to ensure the provision of quality care.

(b) In addition to the requirements in §97.289 of this chapter (relating to Independent Contractors and Arranged Services), a hospice's written contracts must require that all services are:

(1) authorized by the hospice;

(2) furnished in a safe and effective manner by qualified personnel; and

(3) delivered in accordance with a client's plan of care.

§97.855. Criminal Background Checks.

(a) In addition to the requirements in §97.247 of this chapter (relating to Verification of Employability and Use of Unlicensed Persons), a hospice must conduct a criminal history check on all hospice employees and volunteers with direct client contact or access to client records to verify each employee's or volunteer's criminal history report does not include a conviction that bars employment under Texas Health and Safety Code, §250.006, or a conviction that the hospice determines is a contraindication to employment.

(b) In addition to the requirements in §97.289 of this chapter (relating to Independent Contractors and Arranged Services), hospice contracts to provide inpatient care must require that all contracted entities conduct a criminal history check on contracted staff who have direct client contact or access to client records to verify each contract staff's criminal history report does not include a conviction that bars employment under Texas Health and Safety Code, §250.006.

§97.856. Hospice Alternate Delivery Sites.

(a) If a hospice operates an ADS, the hospice must comply with this section.

(b) A Medicare-certified hospice agency must have an ADS approved by CMS before providing Medicare-reimbursed hospice services to Medicare clients from the ADS.

(c) An ADS must be part of the hospice and must share administration, supervision, and services with the parent agency.

(d) In addition to the requirements in §97.242 of this chapter (relating to Organizational Structure and Lines of Authority), the lines of authority and professional and administrative control must be clearly delineated in the hospice's organizational structure and in practice and must be traced to the parent agency.

(e) The hospice must continually monitor and manage all services provided by its ADS to ensure that services are delivered in a safe and effective manner and to ensure that a client and the client's family receives the necessary care and services outlined in the plan of care.

§97.857. Hospice Staff Training.

In addition to the requirements in §97.245 of this chapter (relating to Staffing Policies), a hospice must:

(1) provide orientation about the hospice philosophy to all employees and contracted staff who have client and family contact;

(2) provide an initial orientation for an employee that addresses the employee's specific job duties;

(3) assess the skills and competence of all persons furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required;

(4) have written policies and procedures describing its methods for assessing competency; and

(5) maintain a written description of the in-service training provided during the previous 12 months.

§97.858. Hospice Medical Director.

(a) A hospice must designate in writing one physician to serve as its medical director. The medical director must be a doctor of medicine or osteopathy who is an employee or under contract with the hospice. The medical director may also be a volunteer physician under the control of the hospice.

(b) A hospice must designate in writing a physician designee to assume the same responsibilities and obligations as the medical director when the medical director is not available.

(c) A hospice may contract for a physician to serve as its medical director with either a self-employed physician or a physician employed by a professional entity or physicians group. The contract for medical director services must specify the name of the physician who assumes the medical director responsibilities and obligations.

(d) The medical director or physician designee assumes responsibility for the medical component of a hospice's client care program.

(e) The medical director or physician designee must review a client's clinical information and provide written initial certification that the client's life expectancy is anticipated to be six months or less if the client's terminal illness runs its normal course.

(f) Before each recertification period for the client, the medical director or physician designee must review the client's clinical information and provide written recertification of the client's terminal illness.

(g) When determining the client's life expectancy is six months or less, the medical director or physician designee must consider:

(1) the primary terminal condition;

(2) related diagnoses, if any;

(3) current subjective and objective medical findings;

(4) current medication and treatment orders; and

(5) information about the medical management of any of the client's conditions unrelated to the terminal illness.

§97.859. Hospice Discharge or Transfer of Care.

(a) If a hospice transfers the care of a client to another facility or agency, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the receiving facility or agency.

(b) If a client revokes the election of hospice care, or is discharged by the hospice for any reason listed in subsection (d) of this section, the hospice must provide a copy of the hospice discharge summary and, if requested, a copy of the client's record to the client's attending practitioner.

(c) A hospice discharge summary must include:

(1) a summary of the client's stay, including treatments, symptoms, and pain management;

(2) the client's current plan of care;

(3) the client's latest physician orders; and

(4) any other documentation needed to assist in post-discharge continuity of care or that is requested by the attending practitioner or receiving facility or agency.

(d) In addition to the requirements in §97.295 of this chapter (relating to Client Transfer or Discharge Notification Requirements), a hospice may discharge a client if:

(1) the client moves out of the hospice's service area or transfers to another hospice;

(2) the hospice determines that the client is no longer terminally ill; or

(3) the hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the behavior of the client or other person in the client's home is disruptive, abusive, or uncooperative to the extent that delivery of care to the client or the ability of the hospice to operate effectively is seriously impaired.

(e) Before a hospice seeks to discharge a client for cause, the hospice must:

(1) advise the client that a discharge for cause is being considered;

(2) make a reasonable effort to resolve the problems presented by the client's behavior or situation;

(3) document in the client's record the problems and efforts made by the hospice to resolve the problems; and

(4) ascertain that the client's proposed discharge is not due to the client's use of necessary hospice services.

(f) Before discharging a client for any reason listed in subsection (d) of this section, the hospice must obtain a written physician's discharge order from the hospice medical director. If the client has an attending practitioner involved in the client's care, the attending practitioner should be consulted before discharge and the practitioner's review and decision should be included in the discharge note.

(g) A hospice must have a discharge planning process that addresses the possibility that a client's condition might stabilize or otherwise change such that the client cannot continue to be certified as terminally ill. A client's discharge planning must include any necessary family counseling, client education or other services before the hospice discharges the client based on a decision by the hospice medical director or physician designee that the client is no longer terminally ill.

§97.860. Provision of Drugs, Biologicals, Medical Supplies, and Durable Medical Equipment by a Hospice.

(a) While a client is under hospice care, a hospice must provide medical supplies and appliances, durable medical equipment, and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care.

(b) A hospice must ensure that the interdisciplinary team (IDT) confers with a person with education and training in drug management, as defined in hospice policies and procedures and state law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet a client's needs. The hospice must be able to demonstrate that the person has specific education and

training in drug management. Persons with education and training in drug management include:

(1) a licensed pharmacist, a physician who is board certified in palliative medicine, or a registered nurse (RN) who is certified in palliative care; or

(2) a physician, an RN, or an advanced practice nurse who completes a specific hospice or palliative care drug management course.

(c) A hospice that provides inpatient care directly in its own inpatient unit must provide pharmaceutical services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The services provided by the pharmacist must include evaluation of a client's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.

(d) Only a physician or an advanced practice nurse, in accordance with the plan of care, may order drugs for a client.

(e) If the drug order is verbal or given by or through electronic transmission:

(1) it must be given only to a licensed nurse, pharmacist, or physician; and

(2) the person receiving the order must record and sign it immediately and have the prescribing person sign it in accordance with the agency's policies and applicable state and federal regulations.

(f) A hospice must obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself. A hospice that dispenses, stores, and transports drugs must do so in accordance with federal, state and local laws and regulations, as well as the hospice's own policies and procedures. A hospice that operates its own pharmacy must comply with the Texas Occupations Code, Subtitle J, relating to Pharmacy and Pharmacists.

(g) A hospice that provides inpatient care directly in its own inpatient unit must:

(1) have a written policy in place that promotes dispensing accuracy; and

(2) maintain current and accurate records of the receipt and disposition of all controlled drugs.

(h) The IDT, as part of the review of the plan of care, must determine the ability of the client or the client's family to safely administer drugs and biologicals to the client in his or her home.

(i) Clients receiving care in a hospice inpatient unit may only be administered medications by the following persons:

(1) a licensed nurse, physician, or other health care professional in accordance with their scope of practice and state law;

(2) a home health medication aide; and

(3) a client, upon approval by the IDT.

(j) Drugs and biologicals must be labeled in accordance with currently accepted professional practice and must include appropriate usage and cautionary instructions, as well as an expiration date, if applicable.

(k) A hospice must have written policies and procedures for the management and disposal of controlled drugs in a client's home. The policies and procedures must address the safe use and disposal of controlled drugs in a client's home, including:

(1) at the time when controlled drugs are first ordered;



- (2) when controlled drugs are discontinued;
- (3) when a new controlled drug is ordered;
- (4) when the client dies; and
- (5) the manner for disposing and documenting disposal of controlled drugs in the client's home.

(l) At the time when controlled drugs are first ordered for use in a client's home, the hospice must:

(1) provide a copy of the hospice's written policies and procedures on the management and disposal of controlled drugs in a client's home to the client or client representative and family;

(2) discuss the hospice policies and procedures for managing the safe use and disposal of controlled drugs with the client or legally authorized representative and the family in a language and manner that they understand to ensure that these parties are educated regarding the safe use and disposal of controlled drugs in the client's home; and

(3) document in the client record that the hospice provided and discussed its written policies and procedures for managing the safe use and disposal of controlled drugs in the client's home.

(m) A hospice that provides inpatient care directly in its own inpatient unit must dispose of controlled drugs in compliance with the hospice's policy and in accordance with state and federal requirements, including the Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act. The hospice must maintain current and accurate records of the receipt and disposition of all controlled drugs.

(n) A hospice that provides inpatient care directly in its own inpatient unit must comply with the following additional requirements:

(1) All drugs and biologicals must be stored in secure areas. All controlled drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1976 must be stored in locked compartments within such secure storage areas. Only personnel authorized to administer controlled drugs as noted in subsection (i) of this section may have access to the locked compartments.

(2) Discrepancies in the acquisition, storage, dispensing, administration, disposal, or return of controlled drugs must be investigated immediately by the pharmacist and hospice administrator and reported to the Director of Controlled Substances Registration in accordance with 37 TAC Chapter 13 (relating to Controlled Substances). A hospice must maintain a written account of its investigation and make it available to state and federal officials if requested.

(o) A hospice must ensure that manufacturer recommendations for performing routine and preventive maintenance on durable medical equipment are followed. The equipment must be safe and work as intended for use in the client's environment. Where a manufacturer recommendation for a piece of equipment does not exist, the hospice must ensure that repair and routine maintenance policies are developed. The hospice may use persons under contract to ensure the maintenance and repair of durable medical equipment.

(p) A hospice must ensure that a client, where appropriate, as well as the family or other caregivers, receive instruction in the safe use of durable medical equipment and supplies. The hospice may use persons under contract to ensure client and family instruction. The client, family, or caregiver must be able to demonstrate the appropriate use of durable medical equipment to the satisfaction of the hospice staff.

(q) A hospice may only contract for durable medical equipment services with a durable medical equipment supplier that meets the

Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies Supplier Quality and Accreditation Standards at 42 CFR §424.57.

§97.861. Hospice Short-term Inpatient Care.

(a) A hospice must make inpatient care available when needed for pain control, symptom management, and respite purposes.

(b) A hospice must ensure that inpatient care for pain control and symptom management is provided in either:

(1) a hospice inpatient unit that meets the additional standards in Division 7 of this subchapter (relating to Hospice Inpatient Units) and the Medicare Conditions of Participation for providing inpatient care directly as specified in 42 CFR §418.110; or

(2) a Medicare-certified hospital or skilled nursing facility that also meets:

(A) the licensing standards specified in §97.870(b)(1) - (2) of this subchapter (relating to Staffing in a Hospice Inpatient Unit) and §97.871(d)(1) - (4) of this subchapter (relating to Physical Environment in a Hospice Inpatient Unit) regarding 24-hour nursing services and client areas; and

(B) the federal Medicare standards specified in 42 CFR §418.110(b) and (e) regarding 24-hour nursing services and patient areas.

(c) A hospice must ensure that inpatient care for respite purposes is provided either by:

(1) a facility specified in subsection (b)(1) or (2) of this section; or

(2) a Medicare- or Medicaid-certified nursing facility that also meets the licensing standards specified in §97.871(d)(1) - (4) of this subchapter regarding client areas and the federal Medicare standards specified in 42 CFR §418.110(e) regarding patient areas.

(d) A facility providing respite care must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care. Each client must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(e) In addition to the requirements in §97.289(b) of this chapter (relating to Independent Contractors and Arranged Services), if a hospice has an agreement with a facility to provide for inpatient care, there must be a written contract coordinated by the hospice that specifies:

(1) that the hospice supplies the facility with a copy of the client's plan of care and specifies the inpatient services to be furnished;

(2) that the facility has established client care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its clients;

(3) that the facility's clinical record for a hospice client includes documentation of all inpatient services furnished and events regarding care that occurred at the facility;

(4) that a copy of the discharge summary be provided to the hospice at the time of discharge;

(5) that a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(6) that the facility has identified a person within the facility who is responsible for the implementation of the provisions of the agreement;

(7) that the hospice retains responsibility for ensuring that the training of personnel who will be providing the client's care in the facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (1) - (7) of this subsection are met.

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 June 10, 2013.

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Department of Aging and Disability Services

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## DIVISION 7. HOSPICE PATIENT UNITS

### 40 TAC §97.870, §97.871

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

#### §97.870. Staffing in a Hospice Inpatient Unit.

(a) A hospice is responsible for staffing its inpatient unit with the numbers and types of qualified, trained, and experienced staff to meet the care needs of every client in the inpatient unit to ensure that plan of care outcomes are achieved and negative outcomes are avoided.

(b) A hospice inpatient unit must provide 24-hour nursing services that meet the nursing needs of all clients and are furnished in accordance with each client's plan of care.

(1) A client must receive all nursing services as prescribed in the plan of care and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(2) If at least one client in the hospice inpatient unit is receiving general inpatient care for pain control or symptom management, then each shift must include a registered nurse who provides direct client care.

(3) A hospice inpatient unit must have a nurse call system. The hospice must install in a client's room a system that:

(A) is equipped with an easily activated, functioning device accessible to the client; and

(B) allows the client to call for assistance from a staff person on the unit.

#### §97.871. Physical Environment in a Hospice Inpatient Unit.

(a) Safety Management. A hospice inpatient unit must maintain a safe physical environment free of hazards for clients, staff, and visitors.

(1) A hospice inpatient unit must address real or potential threats to the health and safety of the clients, others, and property.

(2) In addition to §97.256 of this chapter (relating to Emergency Preparedness Planning and Implementation), a hospice inpatient unit must have a written disaster preparedness plan that addresses the core functions of emergency management as described in subparagraphs (A) - (G) of this paragraph. The facility must maintain documentation of compliance with this paragraph.

(A) The portion of the plan on direction and control must:

(i) designate a person by position, and at least one alternate, to be in charge during implementation of an emergency response plan, with authority to execute a plan to evacuate or shelter in place;

(ii) include procedures the facility will use to maintain continuous leadership and authority in key positions;

(iii) include procedures the facility will use to activate a timely response plan based on the types of disasters identified in the risk assessment;

(iv) include procedures the facility will use to meet staffing requirements;

(v) include procedures the facility will use to warn or notify facility staff about internal and external disasters, including during off hours, weekends, and holidays;

(vi) include procedures the facility will use to maintain a current list of who the hospice will notify once warning of a disaster is received;

(vii) include procedures the facility will use to alert critical facility personnel once a disaster is identified; and

(viii) include procedures the facility will use to maintain a current 24-hour contact list for all personnel.

(B) The portion of the plan on communication must include procedures:

(i) for continued communication, including procedures during an evacuation to maintain contact with critical personnel and with all vehicles traveling in an evacuation caravan;

(ii) to maintain an accessible, current list of the phone numbers of:

(I) client family members;

(II) local shelters;

(III) prearranged receiving facilities;

(IV) the local emergency management agencies;

(V) other health care providers; and

(VI) state and federal emergency management agencies;

(iii) to notify staff, clients, families of clients, families of critical staff, prearranged receiving facilities, and others of an evacuation or the plan to shelter in place;

(iv) to provide a contact number for out-of-town family members to call for information; and

(v) to use the web-based system (Facility Information, Vacancy, and Evacuation Status), designed for facilities regulated by DADS to help each other relocate and track clients during disasters that require mass evacuations.

(C) The portion of the plan on resource management must include procedures:

(i) to maintain contracts and agreements with vendors as needed to ensure the availability of the supplies and transportation needed to execute the plan to shelter in place or evacuate;

(ii) to develop accurate, detailed, and current checklists of essential supplies, staff, equipment, and medications;

(iii) to designate responsibility for completing the checklists during disaster operations;

(iv) for the safe and secure transportation of adequate amounts of food, water, medications, and critical supplies and equipment during an evacuation; and

(v) to maintain a supply of sufficient resources for at least seven days to shelter in place, which must include:

(I) emergency power, including backup generators and accounts for maintaining a supply of fuel;

(II) potable water in an amount based on population and location;

(III) the types and amounts of food for the number and types of clients served;

(IV) extra pharmacy stocks of common medications; and

(V) extra medical supplies and equipment, such as oxygen, linens, and any other vital equipment.

(D) The portion of the plan on sheltering in place must:

(i) be developed using information about the building's construction and Life Safety Code (LSC) systems;

(ii) describe the criteria to be used to decide whether to shelter in place versus evacuate;

(iii) include procedures to assess whether the building is strong enough to withstand the various types of possible disasters and to identify the safest areas of the building;

(iv) include procedures to secure the building against damage;

(v) include procedures for collaborating with the local emergency management agencies regarding the decision to shelter in place;

(vi) include procedures to assign each task in the sheltering plan to facility staff;

(vii) describe procedures to shelter in place that allow the facility to maintain 24-hour operations for a minimum of seven days to maintain continuity of care for the number and types of clients served; and

(viii) include procedures to provide for building security.

(E) The portion of the plan on evacuation must:

(i) include contracts with prearranged receiving facilities, including a hospice inpatient facility, skilled nursing facility, nursing facility, assisted living facility, or hospital, with at least one facility located at least 50 miles away;

(ii) include procedures to identify and follow evacuation and alternative routes for transporting clients to a receiving facility and to notify the proper authorities of the decision to evacuate;

(iii) include procedures to protect and transport client records and to match them to each client;

(iv) include procedures to maintain a checklist of items to be transported with clients, including medications and assistive devices, and how the items will be matched to each client;

(v) include staffing procedures the facility will use to ensure that staff accompanies evacuating clients when the hospice transports clients to a receiving facility;

(vi) include procedures to identify and assign staff responsibilities, including how clients will be cared for during evacuations and a backup plan for lack of sufficient staff;

(vii) include procedures facility staff will use to account for all persons in the building during the evacuation and to track all persons evacuated;

(viii) include procedures for the use, protection, and security of the identifying information the facility will use to identify evacuated clients;

(ix) include procedures facility staff will follow if a client becomes ill or dies in route when the hospice transports clients to a receiving facility;

(x) include procedures to make a hospice counselor available when staff accompanies clients during transport by the hospice to a receiving facility;

(xi) include the facility's policy on whether family of staff and clients can shelter at the hospice and evacuate with staff and clients;

(xii) include procedures to coordinate building security with the local emergency management agencies;

(xiii) include procedures facility staff will use to determine when it is safe to return to the geographical area;

(xiv) include procedures facility staff will use to determine if the building is safe for reoccupation; and

(xv) be approved by the local emergency management coordinator (EMC) at least annually and when updated.

(F) The portion of the plan on transportation must:

(i) describe how the hospice prearranges for a sufficient number of vehicles to provide suitable, safe transportation for the type and number of clients being served; and

(ii) include procedures to contact the local EMC to coordinate the facility's transportation needs in the event its prearrangements for transportation fail for reasons beyond the facility's control. The hospice may also register its facility with 2-1-1 Texas.

(G) The portion of the plan on training must include:

(i) procedures that specify when and how the disaster response plan is reviewed with clients and family members;

(ii) procedures to review the role and responsibility of a client able to participate with the plan;

(iii) procedures for initial and periodic training for all facility staff to carry out the plan;

(iv) the frequency for conducting disaster drills and demonstrations to ensure staff are fully trained with respect to their duties under the plan; and

(v) procedures to conduct emergency response drills at least annually either in response to an actual disaster or in a planned drill, which may be in addition to or combined with the drills required by the LSC as specified in subsection (c)(1) of this section.

(b) Physical plant and equipment. A hospice must develop procedures for controlling the reliability and quality of:

(1) the routine storage and prompt disposal of trash and medical waste;

(2) light, temperature, and ventilation and air exchanges throughout the hospice inpatient unit;

(3) emergency gas and water supply; and

(4) the scheduled and emergency maintenance and repair of all equipment.

(c) Fire protection. Except as otherwise provided in this subsection:

(1) A hospice must meet the provisions applicable to the health care occupancy chapters of the 2000 edition of the LSC of the National Fire Protection Association (NFPA). Chapter 19.3.6.3.2, exception number 2 of the 2000 edition of the LSC does not apply to hospices.

(2) In consideration of a recommendation by DADS, CMS may waive, for periods deemed appropriate, specific provisions of the LSC which if rigidly applied would result in unreasonable hardship for the hospice, but only if the waiver would not adversely affect the health and safety of clients.

(3) The provisions of the adopted edition of the LSC do not apply in a state if CMS finds that a fire and safety code imposed by state law adequately protects clients in hospices.

(4) Notwithstanding any provisions of the 2000 edition of the LSC to the contrary, a hospice inpatient unit may place alcohol-based hand rub dispensers in its facility if:

(A) use of alcohol-based hand rub dispensers does not conflict with any state or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(B) the dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(C) the dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(D) the dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the LSC, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

(d) Client areas. A hospice inpatient unit must provide a home-like atmosphere and ensure that client areas are designed to

preserve the dignity, comfort, and privacy of clients. A hospice inpatient unit must provide:

(1) physical space for private client and family visiting;

(2) accommodations for family members to remain with the client throughout the night;

(3) physical space for family privacy after a client's death; and

(4) the opportunity for the client to receive visitors at any hour, including infants and small children.

(e) Client rooms. A hospice must ensure that client rooms are designed and equipped for nursing care, as well as the dignity, comfort, and privacy of clients. A hospice must accommodate a client and family request for a single room whenever possible. A client's room must:

(1) be at or above grade level;

(2) contain a suitable bed and other appropriate furniture for the client;

(3) have closet space that provides security and privacy for clothing and personal belongings;

(4) accommodate no more than two clients and their family members; and

(5) provide at least 80 square feet for a client residing in a double room and at least 100 square feet for a client residing in a single room.

(f) Toilet and bathing facilities. A client room in an inpatient unit must be equipped with, or conveniently located near, toilet and bathing facilities.

(g) Plumbing facilities. A hospice inpatient unit must:

(1) have an adequate supply of hot water at all times; and

(2) have plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by a client.

(h) Infection control. A hospice inpatient unit must maintain an infection control program that protects clients, staff, and others by preventing and controlling infections and communicable disease in accordance with §97.853 of this subchapter (relating to Hospice Infection Control Program).

(i) Sanitary environment. A hospice inpatient unit must provide a sanitary environment by following accepted standards of practice, including nationally recognized infection control precautions, and avoiding sources and transmission of infections and communicable diseases.

(j) Linen. A hospice inpatient unit must have available at all times a quantity of clean linen in sufficient amounts for a client's use. Linens must be handled, stored, processed, and transported in such a manner as to prevent the spread of contaminants.

(k) Meal service and menu planning. A hospice inpatient unit must furnish meals to a client that are:

(1) consistent with the client's plan of care, nutritional needs, and therapeutic diet;

(2) palatable, attractive, and served at the proper temperature; and

(3) obtained, stored, prepared, distributed, and served under sanitary conditions.

(l) Use of restraint or seclusion. A client in a hospice inpatient unit has the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the client, a staff member, or others and must be discontinued at the earliest possible time.

(1) Restraint or seclusion may only be used when less restrictive interventions are determined to be ineffective to protect the client, a staff member, or others from harm.

(2) The type or technique of restraint or seclusion used must be the least restrictive intervention that is effective to protect the client, a staff member, or others from harm.

(3) The use of restraint or seclusion must be:

(A) in accordance with a written modification to the client's plan of care; and

(B) implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospice policy.

(4) The use of restraint or seclusion must be in accordance with the order of a physician authorized to order restraint or seclusion by hospice policy.

(5) An order for the use of restraint or seclusion must never be written as a standing order or on an as needed basis.

(6) The medical director or physician designee must be consulted as soon as possible if the attending practitioner did not order the restraint or seclusion.

(7) An order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others may only be renewed in accordance with the following limits for up to a total of 24 hours:

(A) four hours for adults 18 years of age or older;

(B) two hours for children and adolescents nine to 17 years of age; or

(C) one hour for children under nine years of age.

(8) After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician authorized to order restraint or seclusion by hospice policy must see and assess the client.

(9) Each order for restraint used to ensure the physical safety of a non-violent or non-self-destructive client may be renewed as authorized by hospice policy.

(10) Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.

(11) The condition of the client who is restrained or secluded must be monitored by a physician or trained staff who have completed the training criteria specified in subsection (o) of this section at an interval determined by hospice policy.

(12) Training requirements for a physician and for an attending practitioner must be specified in hospice policy. At a minimum, a physician and an attending practitioner authorized to order restraint or seclusion by hospice policy must have a working knowledge of hospice policy regarding the use of restraint or seclusion.

(13) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the client, a staff member, or others:

(A) the client must be seen face-to-face within one hour after the initiation of the intervention by a physician or registered nurse (RN) who has been trained in accordance with the requirements specified in subsection (m) of this section; and

(B) the physician or RN must evaluate:

(i) the client's immediate situation;

(ii) the client's reaction to the intervention;

(iii) the client's medical and behavioral condition;

and

(iv) the need to continue or terminate the restraint or

seclusion.

(14) If the face-to-face evaluation specified in paragraph (13) of this subsection is conducted by a trained RN, the trained RN must consult the medical director or physician designee as soon as possible after the completion of the one-hour face-to-face evaluation.

(15) All requirements specified under this paragraph are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion is only permitted if the client is continually monitored:

(A) face-to-face by an assigned, trained staff member;

or

(B) by trained staff using both video and audio equipment. This monitoring must be in close proximity to the client.

(16) When restraint or seclusion is used, there must be documentation in the client's record of:

(A) the one-hour face-to-face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;

(B) a description of the client's behavior and the intervention used;

(C) alternatives or other less restrictive interventions attempted, if applicable;

(D) the client's condition or symptoms that warranted the use of the restraint or seclusion; and

(E) the client's response to the interventions used, including the rationale for continued use of the intervention.

(m) Restraint or seclusion staff training requirements. A client has the right to safe implementation of restraint or seclusion by trained staff.

(1) Client care staff working in the hospice inpatient unit must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a client in restraint or seclusion:

(A) before performing any of the actions specified in paragraph (1) of this subsection;

(B) as part of orientation; and

(C) subsequently on a periodic basis consistent with hospice policy.

(2) A hospice must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the client population in:

(A) techniques to identify staff and client behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion;

(B) the use of nonphysical intervention skills;

(C) choosing the least restrictive intervention based on an individualized assessment of the client's medical or behavioral status or condition;

(D) the safe application and use of all types of restraint or seclusion used in the hospice, including training in how to recognize and respond to signs of physical and psychological distress, (for example, positional asphyxia);

(E) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(F) monitoring the physical and psychological well-being of a client who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by hospice policy associated with the one-hour face-to-face evaluation; and

(G) the use of first-aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.

(3) Persons providing staff training must be qualified as evidenced by education, training, and experience in techniques used to address a client's behaviors.

(4) A hospice must document in the staff personnel records that the training and demonstration of competency were successfully completed.

(n) Death reporting requirements. A hospice must report deaths associated with the use of seclusion or restraint in its inpatient unit.

(1) The hospice must report:

(A) an unexpected death that occurs while a client is in restraint or seclusion;

(B) an unexpected death that occurs within 24 hours after the client has been removed from restraint or seclusion; and

(C) a death known to the hospice that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to the client's death. The term "reasonable to assume" in this context includes but is not limited to death related to restrictions of movement for prolonged periods of time, or death related to chest compression, restriction of breathing, or asphyxiation.

(2) The hospice must report a death described in paragraph (1) of this subsection to DADS by telephone at 1-800-458-9858 within 24 hours after knowledge of a client's death.

(3) The hospice must complete Provider Investigation Report For Home and Community Support Services Agency (DADS Form 3613) and send it to DADS Complaint Intake Unit no later than the 10th day after reporting the death to DADS by telephone.

(4) Hospice personnel must document in the client's record the date and time the death was reported to DADS.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## DIVISION 8. HOSPICES THAT PROVIDE HOSPICE CARE TO RESIDENTS OF A SKILLED NURSING FACILITY, NURSING FACILITY, OR INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

### 40 TAC §97.880

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The new section implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §142.0011.

*§97.880. Providing Hospice Care to a Resident of a Skilled Nursing Facility, Nursing Facility, or Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions.*

(a) Professional management. A hospice must assume responsibility for professional management of the hospice services it provides to a resident of a skilled nursing facility (SNF), nursing facility (NF), or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), in accordance with the hospice plan of care. The hospice must make arrangements as necessary for hospice-related inpatient care in a participating Medicare or Medicaid facility in accordance with §97.850 of this subchapter (relating to Organization and Administration of Hospice Services) and §97.861 of this subchapter (relating to Hospice Short-term Inpatient Care).

(b) Written contract. A hospice and SNF, NF, or ICF/IID must have a written contract that allows the hospice to provide services in the facility. The contract must be signed by an authorized representative of the hospice and the SNF, NF, or ICF/IID before hospice services are provided. In addition to the requirements in §97.289(b) of this chapter (relating to Independent Contractors and Arranged Services), the written contract must include:

(1) the manner in which the SNF, NF, or ICF/IID and the hospice are to communicate with each other and document such communications to ensure that the needs of a client are addressed and met 24 hours a day;

(2) a provision that the SNF, NF, or ICF/IID immediately notifies the hospice of:

(A) a significant change in the client's physical, mental, social, or emotional status;

(B) clinical complications that suggest a need to alter the plan of care;

(C) the need to transfer the client from the SNF, NF, or ICF/IID; or

(D) the death of a client;

(3) a provision stating that if the SNF, NF, or ICF/IID transfers the client from the facility that the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care related to the terminal illness and related conditions;

(4) a provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided;

(5) an agreement that the SNF, NF, or ICF/IID is responsible for furnishing 24-hour room and board care, meeting the personal care and nursing needs that would have been provided by the primary caregiver at home at the same level of care provided before the client elected hospice care;

(6) an agreement that the hospice is responsible for providing services at the same level and to the same extent as those services would be provided if the SNF, NF, or ICF/IID resident were in his or her own home;

(7) a delineation of the hospice's responsibilities, which include providing medical direction and management of the client; nursing; counseling, including spiritual, dietary and bereavement counseling; social work; medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions;

(8) a provision that the hospice may use the SNF, NF, or ICF/IID nursing personnel where permitted by state law and as specified by the SNF, NF, or ICF/IID to assist in the administration of prescribed therapies included in the plan of care, only to the extent that the hospice would routinely use the services of a hospice client's family in implementing the plan of care;

(9) a provision stating that the hospice must report an alleged violation involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of client property by non-hospice personnel to the SNF, NF or ICF/IID administrator within 24 hours after the hospice becomes aware of the alleged violation; and

(10) a delineation of the responsibilities of the hospice and the SNF, NF, or ICF/IID to provide bereavement services to SNF, NF, or ICF/IID staff.

(c) Hospice plan of care. In accordance with §97.821 of this subchapter (relating to Hospice Plan of Care), a written hospice plan of care must be established and maintained in consultation with SNF, NF, or ICF/IID representatives. Hospice care must be provided in accordance with the hospice plan of care.

(1) A hospice plan of care must identify the care and services needed to care for the client and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.

(2) A hospice plan of care must reflect the participation of the hospice, representatives of the SNF, NF, or ICF/IID, and the client and family to the extent possible.

(3) Any changes in the hospice plan of care must be discussed with the client or the client's legally authorized representative, and SNF, NF, or ICF/IID representatives, and must be approved by the hospice before implementation.

(d) Coordination of services. In addition to the requirements in §97.288 of this chapter (relating to Coordination of Services) and §97.823 of this subchapter (relating to Coordination of Services by the Hospice), a hospice must:

(1) designate a member of each interdisciplinary team (IDT) that is responsible for a client who is a resident of a SNF, NF, or ICF/IID who is responsible for:

(A) providing overall coordination of the hospice care of the SNF, NF, or ICF/IID resident with SNF, NF, or ICF/IID representatives; and

(B) communicating with SNF, NF, or ICF/IID representatives and other health care providers participating in the provision of care for the terminal illness and related conditions and other conditions to ensure quality of care for the client and family; and

(2) ensure that the hospice IDT communicates with the SNF, NF, or ICF/IID medical director, the client's attending practitioner, and other physicians participating in the provision of care to the client as needed to coordinate hospice care with medical care provided by other physicians; and

(3) provide the SNF, NF, or ICF/IID with:

(A) the most recent hospice plan of care specific to the client;

(B) the hospice election form and any advance directives specific to the client;

(C) physician certification and recertification of the terminal illness specific to the client;

(D) names and contact information for hospice personnel involved in hospice care of the client;

(E) instructions on how to access the hospice's 24-hour on-call system;

(F) hospice medication information specific to the client; and

(G) hospice physician and, if any, attending practitioner orders specific to the client.

(e) Orientation and training of staff. Hospice personnel must assure that SNF, NF or ICF/IID staff who provide care to the hospice's clients have been oriented and trained in the hospice philosophy, including the hospice's policies and procedures regarding methods of comfort, pain control, symptom management, as well as principles about death and dying, how a person may respond to death, the hospice's client rights, the hospice's forms, and the hospice's record keeping requirements.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 438-3734



## SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §97.220, concerning service areas, and §97.281, concerning client care policies, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

### BACKGROUND AND PURPOSE

The purpose of these amendments is to allow a home and community support service agency (HCSSA) to provide services outside its licensed service area to a client who leaves the service area. An HCSSA is not required to submit written notice to DADS to expand its service area if the HCSSA provides services to the client outside its licensed service area, but within the state of Texas, for no more than 60 consecutive days.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.220 specifies that, if an HCSSA is providing services outside its service area, the HCSSA must maintain compliance with applicable federal and state requirements and references additional rules that apply to a hospice agency that provides services outside its service area. The amendment specifies a time frame for an HCSSA to submit written notice to DADS to expand its service area and to continue the services for more than 60 consecutive days. The proposed amendment requires an HCSSA to document the start and end dates for services provided outside its service area. The amendment also provides notice that an HCSSA is responsible for knowing the requirements of a client's funding source if the HCSSA decides to provide services to the client outside its service area. The amendment requires an HCSSA to inform a client of the effect on HCSSA services if the client leaves the service area and the HCSSA does not to provide services to the client outside its service area.

The proposed amendment to §97.281 requires an HCSSA to address placing a client's services on hold in its client care policies if placing services on hold is a practice of the HCSSA.

### FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or mi-

cro-businesses, because the amendments do not require an HCSSA to provide services outside the service area. If an HCSSA provides services to a client outside its service area for no more than 60 consecutive days, an HCSSA is not required to submit written notice to DADS and pay a fee to expand the service area. If an HCSSA chooses to provide services to a client outside the service area for more than 60 consecutive days, the HCSSA must expand its service area by submitting written notice to DADS and paying the required fee.

### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that an HCSSA will have more flexibility in providing services to clients who travel outside an HCSSA's licensed service area.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The proposed amendments do not require an HCSSA to provide services outside the service area. The amendments will not affect a local economy.

### TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sylvia Trevino at (361) 878-3419 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R10, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R10" in the subject line.

## DIVISION 2. CONDITIONS OF A LICENSE

### 40 TAC §97.220

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules



governing the delivery of services to persons who are served or regulated by DADS.

The amendments implement Texas Government Code, §531.0055; Texas Health and Safety Code, §§142.001 - 142.030; and Texas Human Resources Code, §161.021.

§97.220. *Service Areas.*

(a) An agency must identify its licensed service area. A branch office or alternate delivery site must be located within the parent agency's licensed service area. An agency must not provide services outside its licensed service area, except as provided in subsections (i) and (j) of this section.

(b) An agency must maintain adequate staff to provide services and to supervise the provision of services [within its licensed service area].

(c) An agency may expand its service area at any time during the licensure period. An agency must submit written notice to DADS to expand the agency's service area at least 30 days before the expansion unless DADS grants the agency an exemption from the 30-day time frame as specified in subsection (d) of this section.

(d) An agency is exempt from the requirement to submit written notice to DADS no later than 30 days before the agency expands its service area if DADS determines an emergency situation exists that would affect client health and safety.

(1) An agency must notify DADS immediately of a possible emergency situation that would affect client health and safety.

(2) DADS grants or denies an exemption from the 30-day written notice requirement.

(A) If DADS grants an exemption, the agency must submit written notice to DADS, as described in subsection (e) of this section, no later than 30 days after the date DADS grants the exemption.

(B) If DADS denies an exemption, the agency may not expand agency's service area until at least 30 days after the agency submits the written notice to DADS as described in subsection (e) of this section.

(e) If an agency intends to expand or reduce the agency's service area, the agency must submit written notice to DADS by using the Home and Community Support Services Agency License Application (DADS Form 2021), following the instructions on the DADS website for requesting to expand or reduce the agency's service area.

(f) If an agency reports a change in service area, the agency must pay a fee and may be subject to a late fee, as described in §97.208 of this subchapter (relating to Reporting Changes in Application Information and Fees).

(g) An agency may reduce its service area at any time during the licensure period. An agency must submit written notice to DADS informing DADS that the agency reduced its service area no later than 10 days after the reduction.

(h) DADS sends the agency a Notification of Change reflecting the change in service area. An agency is not required to post the Notification of Change in service area beside its license.

(i) An agency is exempt from the requirements described in subsections (c) - (f) of this section if a temporary expansion results from an emergency or disaster, as specified in §97.256(o) of this subchapter (relating to Emergency Preparedness Planning and Implementation).

(j) An agency may provide services to a client outside the agency's licensed service area but within the state of Texas in accor-

dance with this subsection and, for an agency licensed to provide hospice services, the additional standards in §97.830 of this chapter (relating to Provision of Hospice Core Services).

(1) The agency may provide the services for no more than 60 consecutive days unless the agency expands its service area as described in subsections (e) and (f) of this section, except the written notice to DADS must be postmarked no later than the 60th day to comply with this subsection and avoid a late fee.

(2) The client must reside in the agency's service area and be receiving services from the agency at the time the client leaves the agency's service area.

(3) The agency must maintain compliance with the statute and this chapter and, if applicable, federal home health and hospice regulations.

(4) The agency must document in the client record the start and end dates for the services.

(5) An agency's ability to provide services to a client outside its service area may depend on regulations or requirements established by the client's private or public funding source, including a health maintenance organization or other private third-party insurance, Medicaid (Title XIX of the Social Security Act), Medicare (Title XVIII of the Social Security Act), or a state-funded program. The agency is responsible for knowing these requirements.

(k) If a client notifies an agency that the client is leaving the agency's service area and the agency does not provide services in accordance with subsection (j) of this section, the agency must inform the client that leaving its service area will require the agency to:

(1) place the client's services on hold in accordance with the agency's written policy required by §97.281 of this subchapter (relating to Client Care Policies) until the client returns to the agency's service area;

(2) transfer and discharge the client in accordance with §97.295 of this subchapter (relating to Client Transfer or Discharge Notification Requirements) and the agency's written policy required by §97.281 of this subchapter; or

(3) discharge the client in accordance with §97.295 of this subchapter and the agency's written policy required by §97.281 of this subchapter.

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 June 10, 2013.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



DIVISION 4. PROVISION AND  
COORDINATION OF TREATMENT SERVICES

40 TAC §97.281

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for the licensing and regulation of home and community support services agencies; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments implement Texas Government Code, §531.0055; Texas Health and Safety Code, §§142.001 - 142.030; and Texas Human Resources Code, §161.021.

§97.281. *Client Care Policies.*

An agency must adopt and enforce a written policy that specifies the agency's client care practices. The written policy must include the following elements if covered under the scope of services provided by the agency:

- (1) initial assessment, reassessment;
- (2) start of care, placing services on hold, transfer, and discharge;
- (3) intravenous services;
- (4) care of the pediatric client;
- (5) triaging clients in the event of disaster;
- (6) how to handle emergencies in the home;
- (7) safety of staff;
- (8) procedures the staff will perform for clients, such as dressing changes, Foley catheter changes, wound irrigation, administration of medication;
- (9) psychiatric nursing procedures;
- (10) patient and caregiver teaching relating to disease process/procedures;
- (11) care planning;
- (12) care of the dying patient/client;
- (13) receiving physician orders;
- (14) performing waived testing;
- (15) medication monitoring; and
- (16) anything else pertaining to client care.

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 June 10, 2013.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

### CHAPTER 362. DEFINITIONS

#### 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions. The amendment emphasizes that licensees are responsible for continuing their certification with NBCOT if they want to use the copyrighted initials OTR or COTA. The amendment also modifies the definition for "Direct Contact" to clarify.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of when to use the terms. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or through email to [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov).

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

#### §362.1. *Definitions.*

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

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

(5) Certified Occupational Therapy Assistant (COTA)--An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(6) - (11) (No change.)

(12) Direct Contact--Refers to contact with the client which is [and includes] face-to-face in person [or via visual telecommunications].

(13) - (29) (No change.)

(30) Occupational Therapist, Registered (OTR)--An individual who uses this term must hold a regular or provisional license to practice or represent self as an Occupational Therapist in Texas. An individual who uses this term is responsible for ensuring that he or

she is otherwise qualified to use it by maintaining certification through NBCOT.

(31) - (40) (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 June 4, 2013.

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John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 305-6900



## CHAPTER 369. DISPLAY OF LICENSES

### 40 TAC §369.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §369.3, concerning Use of Titles. The amendment emphasizes that licensees are responsible for continuing their certification with NBCOT if they want to use the copyrighted initials OTR or COTA. Otherwise the correct designation after signing the name is OT or OTA. One may only use the copyrighted initials if he or she is maintaining certification with NBCOT.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of when to use the terms. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or through email to [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov).

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§369.3. *Use of Titles.*

(a) A licensed occupational therapist shall use the title occupational therapist or the initials OT. OTR is an alternate term for OT if an individual who is licensed by this board takes the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(b) A licensed occupational therapy assistant shall use the title occupational therapy assistant or the initials OTA. COTA is an alternate term for OTA if an individual who is licensed by this board takes

the responsibility for ensuring that he or she is qualified to use it by maintaining certification through NBCOT.

(c) No other titles or initials are conferred for a license from this board.

(d) Except when practicing as an occupational therapy practitioner in a higher education setting or when signing as an author for a publication, and that publication requires a recognized publication format, any letters designating other titles, academic degrees, or certifications must follow the initials OT or OTA (example John Doe, OT, CHT or Jane Doe, OTR, PhD).

(e) Limitations. A person who does not hold a license to practice occupational therapy in Texas may not use any of the following terms in conjunction with their business, work, or services:

(1) "occupational therapist," "licensed occupational therapist," "occupational therapist, registered;"

(2) "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant;"

(3) "OT," "OTR," "LOT," "OTR/L;"

(4) "OTA," "LOTA," "COTA," "COTA/L;" or

(5) any other words, letters, abbreviations, or insignia indicating or implying that he or she is an occupational therapist or an occupational therapy assistant.

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 June 4, 2013.

TRD-201302257

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 305-6900



## CHAPTER 372. PROVISION OF SERVICES

### 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning Provision of Services. The amendment emphasizes that only an occupational therapist may establish the Plan of Care, treatment frequency, and discharge of a patient and this cannot be dictated to the occupational therapist.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be knowledge of who makes the decisions. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy

Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or through email to [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov).

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§372.1. *Provision of Services.*

(a) Medical Conditions.

(1) Occupational therapists may evaluate the patient/client to determine the need for occupational therapy services without a referral.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(3) The referral may be an oral or signed written order. The occupational therapy practitioner must ensure that all oral orders are followed with a signed written order.

(4) If a written referral signed by the referral source is not received by the third treatment or within two weeks from the receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, return receipt, etc.). The therapist must exercise professional judgment to determine cessation or continuation of treatment with a receipt of the written referral.

(b) Non-Medical Conditions.

(1) Consultation, monitored services, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) Screening. A screening may be performed by an occupational therapy practitioner.

(d) Evaluation.

(1) Only an occupational therapist may perform the evaluation.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist must have face-to-face, real time interaction with the patient or client during the evaluation process.

(4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(e) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist [an occupational therapy assistant] to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services

that are provided, when the patient should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have face-to-face, real time interaction with the patient or client during the intervention process.

(8) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(f) Documentation.

(1) The patient's/client's records include the medical referral, if required; and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes, any re-evaluations, if required; any written communication and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of his or her available supervising occupational therapist in each intervention note. If there is not a current supervising occupational therapist, the occupational therapy assistant cannot intervene.

(g) Discharge.

(1) Only an occupational therapist has the authority to discharge patients from occupational therapy services. The discharge is based on whether the patient or client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services; or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation and/or make recommendations for any further needs of the patient in another continuum of care.

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 June 4, 2013.

TRD-201302258

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



## CHAPTER 373. SUPERVISION

### 40 TAC §373.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant. The amendment removes the word "Licensed" in the title as all occupational therapy assistants who provide occupational therapy services must be licensed. The amendment also repeats information from 40 TAC §372.1(f)(3) which states that if there is no occupational therapist, the occupational therapy assistant cannot provide OT services.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be ease of finding this information. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or through email at [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov).

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

*§373.3. Supervision of an [a Licensed] Occupational Therapy Assistant.*

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of a full time employed occupational therapy assistant by the occupational therapist(s) in all settings includes:

(1) A minimum of six hours a month of frequent communication between the supervising occupational therapist(s) and the occupational therapy assistant(s) by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients.

(3) These hours shall be documented on a Supervision Log for each employer. The occupational therapist(s) or employer may request a copy of the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by occupational therapist(s) when supervision is given.

(4) All the occupational therapist(s), whether working full time, PRN or part-time, who delegate to the occupational therapy assistant, must be participating in the supervision time, whether on a rotational or shared basis.

(c) Occupational therapy assistants working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients.

(d) Those months where the occupational therapy assistant licensee does not work as an occupational therapy assistant, he or she shall write N/A in the Supervision Log for that month.

(e) Occupational therapy assistants with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an occupational therapist(s), as outlined for part-time employment in this section. Occupational therapy assistants who work for more than one employer must submit the name and license number at least one OT at each employer, though any of the occupational therapist(s) at the employer may supervise.

(f) The occupational therapy assistant must include the name of the supervising OT in each patient's intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the patient's/client's intervention.

(g) If the occupational therapy assistant has no occupational therapist's name to write in their notes, or available to call, the occupational therapy assistant cannot provide OT services.

(h) ~~[(g)]~~ Occupational therapy assistants' Supervision Logs are subject to audit by the board.

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

Filed with the Office of the Secretary of State on June 4, 2013.

TRD-201302259

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



## CHAPTER 376. REGISTRATION OF FACILITIES

### 40 TAC §376.4

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.4, concerning Requirements for Regis-

tered Facilities. The amendment emphasizes that owners must notify the Board if they change their name or address and order a new wall license to reflect that change.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be learning under which circumstances they must order a new facility registration. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or through email to [augusta@ptot.texas.gov](mailto:augusta@ptot.texas.gov).

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

*§376.4. Requirements for Registered Facilities.*

(a) Each facility must have a designated OT or OTR-in-charge. A registered facility is required to report the name and license number of the new OT or OTR-in-charge no later than 30 days after the change occurs.

(b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for inspection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(c) A registered Occupational Therapy Facility is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.

(d) An individual or entities that registers a facility under this Rule must notify the board within 30 days of any change to the physical/street address or mailing address or name and pay for a new wall certificate to reflect the physical address change. A change in ownership or type of ownership requires a new registration.

(e) The owner must cancel a facility registration if occupational therapy services will no longer be provided at that facility. To cancel registration the owner must notify the board in writing within 30 days of the termination of occupational therapy services at this facility. If the owner decides to resume the provision of occupational services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §376.8 of this title (relating to Restoration of Registration).

(f) If the owner does not notify the board in writing that there is a termination of occupational therapy services and the facility's registration is expired more than one year, there will be a penalty should the owner want to resume occupational therapy services at the facility at a future date.

(g) Within thirty days of a change in facility ownership, the former owner must notify the Board in writing of the change. The new owner must register the facility under new ownership as required by §376.10 of this title (relating to Change in Occupational Therapy Facility Ownership).

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

Filed with the Office of the Secretary of State on June 4, 2013.

TRD-201302260

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 21, 2013

For further information, please call: (512) 305-6900



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

#### CHAPTER 601. INFORMED CONSENT

##### 25 TAC §601.2

The Texas Medical Disclosure Panel withdraws the proposed amendment to §601.2 which appeared in the January 25, 2013, issue of the *Texas Register* (38 TexReg 352).

Filed with the Office of the Secretary of State on June 4, 2013.

TRD-201302269

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Effective date: June 4, 2013

For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

##### SUBCHAPTER L. ELECTRONIC TRANSACTIONS

##### 28 TAC §§1.1301 - 1.1306

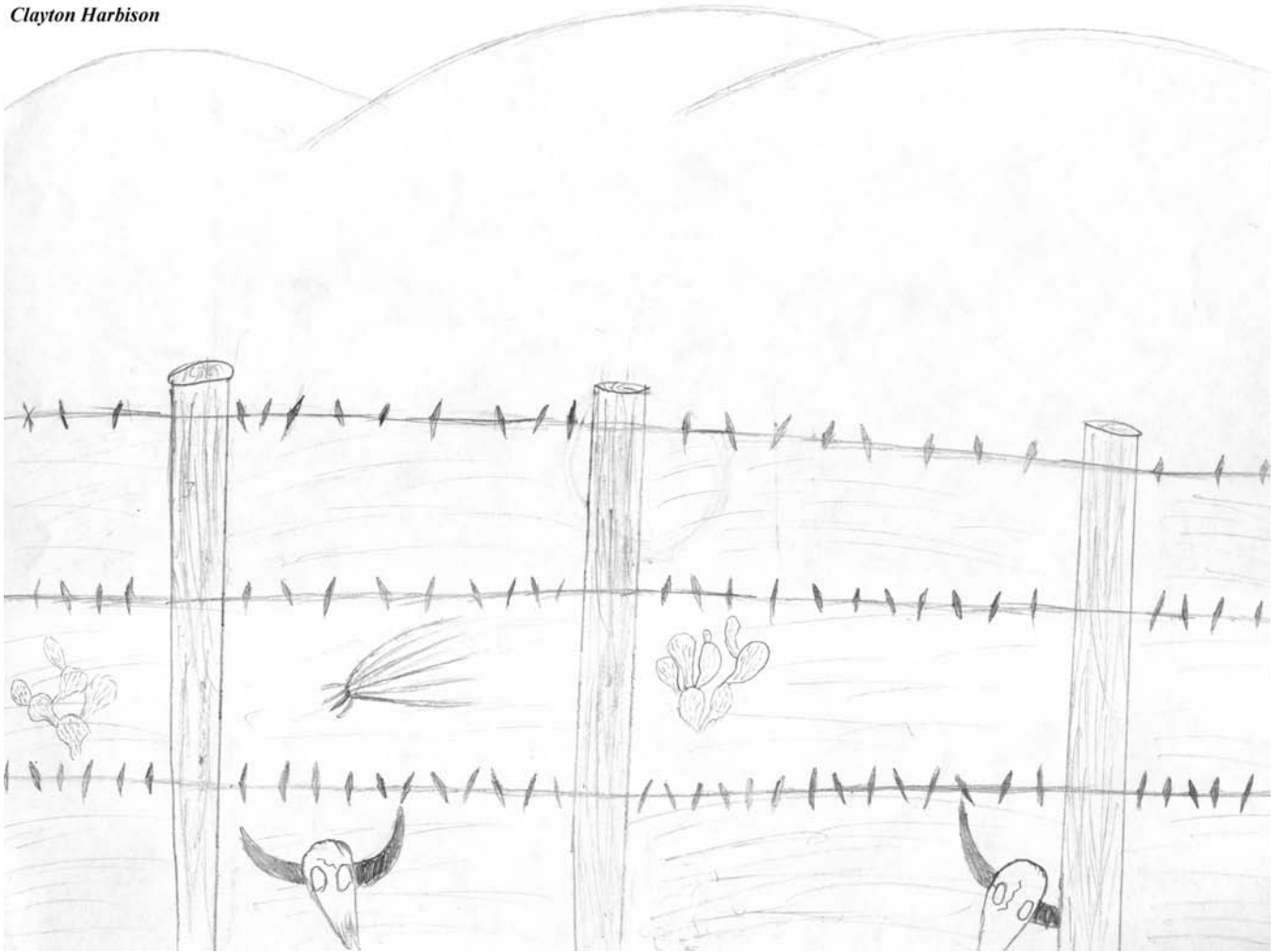
Proposed new §§1.1301 - 1.1306, published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9590), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302325



*Clayton Harbison*





# 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 22. EXAMINING BOARDS

### PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

#### CHAPTER 871. ATHLETIC TRAINERS

##### SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

###### 22 TAC §871.9, §871.12

The Advisory Board of Athletic Trainers (board) adopts amendments to §871.9 and §871.12, concerning the licensure and regulation of athletic trainers, without changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2075) and, therefore, the sections will not be republished.

###### BACKGROUND AND PURPOSE

In accordance with Texas Occupations Code, Chapter 451, the board amended the sections to modify the alternative for licensure for applicants who have successfully completed an approved national examination. Additionally, the continuing education requirement for renewal of a license is also modified.

###### SECTION-BY-SECTION SUMMARY

The amendment to §871.9 restricts the alternative for licensure for applicants who have successfully completed an approved national examination to those that have not previously attempted completion of an examination administered by the board.

The amendment to §871.12 requires a licensee to complete two hours of training in concussion management as part of the continuing education required for renewal of a license.

###### COMMENTS

The board did not receive any comments regarding the proposed amendments during the comment period.

###### STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

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 June 5, 2013.

TRD-201302288

David J. Weir

Chair

Advisory Board of Athletic Trainers

Effective date: June 25, 2013

Proposal publication date: March 29, 2013

For further information, please call: (512) 776-6990

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 27. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, and 27.15 and new §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15, 27.17, 27.19, 27.21, 27.23, 27.25, and 27.27, concerning Case Management for Children and Pregnant Women, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 611), and the sections will not be republished.

###### BACKGROUND AND PURPOSE

Case Management for Children and Pregnant Women is a Medicaid benefit that assists eligible clients in gaining access to necessary medical, social, educational, and other services related to their health condition or health risk. Case Management for Children and Pregnant Women is administered by the department by authorization of the Health and Human Services Commission. The repeals and rewrite of the rules are necessary to restructure the rules, add clarity, remove redundancies, and improve flow and accuracy. Other revisions are to (1) clarify the criteria for client eligibility by providing language which matches the federal definition of case management; (2) define and separate the provider and case manager requirements and responsibilities; and (3) increase the provider base by removing the requirement of two years of experience for registered nurses with a bachelor or advanced degree in nursing; and for social workers.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Government Code, §2001.039, requires that each state agency review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. Sections 27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, and 27.15 have been reviewed and are being

repealed and new rules are adopted. The department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

##### Subchapter A. General Provisions.

New §27.1 and §27.3 define the purpose and application of the rules and define terms used in this chapter.

##### Subchapter B. Client Services.

New §27.5 sets forth criteria for client eligibility to receive Case Management for Children and Pregnant Women services. New §27.7 outlines client rights, including freedom of choice of case management providers and the right to a fair hearing. New §27.9 explains how client confidentiality will be protected. New §27.11 describes the essential components of Case Management for Children and Pregnant Women services. The requirement for prior authorization is set forth in §27.13 and requires prior authorization for comprehensive and follow-up contacts.

##### Subchapter C. Provider Qualifications and Responsibilities.

New §27.15 sets forth minimum qualifications to be approved as a provider. Section 27.17 describes the provider approval process. New §27.19 describes the responsibilities of providers. New §27.21 outlines case manager qualifications. Changes to the case manager requirement are that the experience requirement is removed for registered nurses and social workers with a bachelor or advanced degree. Changes indicate that registered nurses with an associate's degree are required to possess two years of cumulative paid full-time work experience or two years of supervised, full-time educational internship/practicum experience in the past ten years with children, up to age 21, and/or pregnant women. Experience must include assessing the psychosocial and health needs of and making community referrals for these populations. The new language also mandates social workers have licensure appropriate for their practice, including the practice of independent social work as governed by 22 TAC Chapter 781.

New §27.23 specifies case manager responsibilities including reporting of suspected abuse and neglect. Utilization and quality assurance review activities and processes are set forth in new §27.25 and include provider responsibilities in the event of an overpayment. New §27.27 defines actions the department may take in the event of provider non-compliance with rules, policies, or procedures, including the withdrawal of approval for a provider.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### 25 TAC §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15

#### STATUTORY AUTHORITY

The repeals are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules

and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program.

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

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302329

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 30, 2013

Proposal publication date: February 8, 2013

For further information, please call: (512) 776-6972



## SUBCHAPTER A. GENERAL PROVISIONS

### 25 TAC §27.1, §27.3

#### STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program.

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

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TRD-201302330

Lisa Hernandez  
General Counsel  
Department of State Health Services  
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For further information, please call: (512) 776-6972



## SUBCHAPTER B. CLIENT SERVICES

25 TAC §§27.5, 27.7, 27.9, 27.11, 27.13

### STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program.

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

Filed with the Office of the Secretary of State on June 10, 2013.

TRD-201302331  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Effective date: June 30, 2013  
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For further information, please call: (512) 776-6972



## SUBCHAPTER C. PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

25 TAC §§27.15, 27.17, 27.19, 27.21, 27.23, 27.25, 27.27

### STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the

operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program.

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

Filed with the Office of the Secretary of State on June 10, 2013.

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Lisa Hernandez  
General Counsel  
Department of State Health Services  
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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 3. TEXAS HIGHWAY PATROL SUBCHAPTER B. ENFORCEMENT ACTION

##### 37 TAC §3.28

The Texas Department of Public Safety (the department) adopts the repeal of §3.28, concerning Citation Disposition Receipt Program. This repeal is adopted without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2746) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined the reason for initially adopting this rule no longer exists, therefore the repeal of §3.28 is necessary.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

Filed with the Office of the Secretary of State on June 6, 2013.

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General Counsel  
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## SUBCHAPTER D. TRAFFIC SUPERVISION

### 37 TAC §3.57

The Texas Department of Public Safety (the department) adopts amendments to §3.57, concerning Traffic Warrant Service. These amendments are adopted without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2746) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect the current procedures and requirements as determined by Texas Code of Criminal Procedure, Article 15.17, and the courts in reference to the disposition of a served traffic warrant.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

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### 37 TAC §3.61

The Texas Department of Public Safety (the department) adopts the repeal of §3.61, concerning Safety Responsibility Activities. This repeal is adopted without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2747) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined the reason for initially adopting this rule no longer exists, therefore the repeal of §3.61 is necessary.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

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## CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

### SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

#### 37 TAC §§19.1, 19.2, 19.4 - 19.6

The Texas Department of Public Safety (the department) adopts amendments to §§19.1, 19.2, and 19.4 - 19.6, concerning Breath Alcohol Testing Regulations. These amendments are adopted without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2748) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed Chapter 19, Breath Alcohol Testing Regulations, and determined an update to these rules was necessary to allow the department greater flexibility to efficiently carry out the provisions of Chapter 19. Furthermore, the amendments will clarify the intent of these rules.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under that section; Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods; and §724.003, which authorizes the department to adopt rules to administer Chapter 724 of the Texas Transportation Code.

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

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## CHAPTER 32. BICYCLES--USE AND SAFETY

### 37 TAC §§32.1 - 32.3

The Texas Department of Public Safety (the department) adopts the repeal of §§32.1 - 32.3, concerning Bicycles--Use and Safety. This repeal is adopted without changes to the proposal as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2749) and will not be republished.

Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined the reasons for initially adopting these rules no longer exist. This chapter is obsolete and the Bicycle Safety Program at the department is defunct.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under that 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.

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General Counsel  
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## CHAPTER 36. METALS REGISTRATION

### 37 TAC §§36.1 - 36.7, 36.9 - 36.24

The Texas Department of Public Safety (the department) adopts amendments to §§36.1 - 36.7, 36.9 - 36.14, 36.17 and 36.18; and new §§36.15, 36.16 and 36.19 - 36.24, concerning Metals Registration. These amendments and new sections are adopted without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2750) and will not be republished.

Many of the amendments are necessitated by amendments to Texas Occupations Code, Chapter 1956 (the Act) as a result of 82nd Legislature, 2011, Senate Bill 694. Other amendments are required to facilitate the department's move toward online and electronic application submission and data collection. This adoption is necessary to reorganize existing language, improve clarity, and to establish consistency when possible with other

programs within the department's Regulatory Services Division. Each rule has also been amended to eliminate references to paper forms and to establish the requirement of online submissions.

No comments were received regarding the adoption of these amendments and new sections.

These amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act; and §1956.032(a)(5) and (h), which require that the commission adopt rules establishing the type of documentation required of those who seek to sell burned insulation wire.

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

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### 37 TAC §§36.15, 36.16, 36.19 - 36.21

The Texas Department of Public Safety (the department) adopts the repeal of §§36.15, 36.16 and 36.19 - 36.21, concerning Metals Registration. This repeal is adopted without changes to the proposal as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2755) and will not be republished.

Specifically, §36.16 is repealed as it is duplicative of statutory authority and therefore unnecessary. Section 36.19 is repealed because dealers of crafted precious metals are no longer regulated by the department pursuant to 82nd Legislative Session, 2011, Senate Bill 694. The repeal of §36.20 is necessary to eliminate paper forms. Section 36.15 and §36.21 are repealed to reorganize existing language and improve the clarity of Chapter 36.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms.

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

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION**

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §41.103, concerning Definitions; §41.205, concerning Employer Appointment of a Designated Representative; §41.225, concerning Criminal Conviction History Checks; §41.227, concerning Required Registry Checks; §41.301, concerning Contracting as a Consumer Directed Services Agency; §41.305, concerning Appointment of a Designated Representative; §41.307, concerning Initial Orientation of an Employer; §41.309, concerning Financial Management Services and Employer-Agent Responsibilities; §41.323, concerning Criminal Conviction History Check; §41.325, concerning Required Registry Checks; §41.327, concerning Verification of Applicants for Employees, Contractors, and Vendors; and §41.329, concerning Continued Eligibility of an Employee, Contractor, or Vendor; new §41.206, concerning Proof of Guardianship for the Employer; §41.303 concerning Obtaining and Revoking Federal and State Approval to be a Vendor Fiscal/Employer Agent; and §41.306, concerning Proof of Guardianship for Financial Management Services Agencies; and the repeal of §41.203, concerning Registration of an Employer; and §41.303, concerning Employer Registration, in Chapter 41, Consumer Directed Services Option. The amendments to §§41.103, 41.205, 41.225, 41.227, 41.301, 41.305, 41.323, 41.325, 41.327, and 41.329 and new §§41.206, 41.303, and 41.306 are adopted with changes to the proposed text published in the January 11, 2013, issue of the *Texas Register* (38 TexReg 224). The amendments to §41.307 and §41.309 and the repeal of §41.203 and §41.303 are adopted without changes to the proposed text.

The amendments, new sections, and repeals have multiple purposes. First, the rules relating to criminal history checks implement Senate Bill 223, 82nd Legislature, Regular Session, 2011, which amended Texas Health and Safety Code (THSC), Chapter 250, allowing financial management services agencies (FMSAs), formerly called consumer directed services agencies (CDSAs), to access the secure Department of Public Safety (DPS) website to run criminal history checks on behalf of consumer directed services (CDS) employers and forward that information to the CDS employers. Criminal history checks using the DPS public website are required for a designated representative (DR), a person selected by the CDS employer who volunteers to assist the CDS employer with employer tasks, if the DR is not a relative. Second, the rules address areas identified by DADS Internal Audit that need strengthening to ensure the option is operating cor-

rectly and efficiently. The rules specify the frequency of registry checks for ongoing verification of provider qualifications and add a requirement for verification of social security numbers for employment. The rules strengthen the FMSA contracting requirements by adding the prerequisite to pass a knowledge test before contracting with DADS and specifying that a third-party agent must not be used for certain payroll functions. The rules clarify that FMSAs must function as vendor fiscal/employer agents in accordance with Section 3504 of the Internal Revenue Service (IRS) Code.

FMSAs are required to provide an initial face-to-face orientation to CDS employers when they begin using the CDS option. The rules provide greater detail about the topics to be covered than the previous rules.

The rules also change the term "consumer directed services agency" to "financial management services agency" to reflect the term used by the Centers for Medicare and Medicaid Services and to distinguish the FMS function from that of a licensed home health agency.

Changes were made to §41.225 to replace "contractor" with the appropriate term of "entity" and to require the employer or DR to destroy the criminal history report requested under §41.225(g) within five days after receipt; §41.227 to change "contractor" to "entity"; §41.301 to clarify the functions that an FMSA must not use a third party to perform; and §41.323 to add the time frame during which the FMSA must obtain criminal history record information, correct a grammatical error, and require the FMSA to destroy the criminal history report obtained under §41.323(g) within five calendar days after receipt.

DADS received written comments from CDS in Texas, In-Home Attendant Services, Ltd., Angels of Care, and Helping Restore Ability. A summary of the comments and the responses follows.

Comment: Two commenters suggested changes to §41.103 to clarify the meanings of "vendor fiscal/employer agent," "legally authorized representative (LAR)," "local authority," and "relative."

Response: The agency agrees in part with the comments. The agency deleted the term "employer-agent" and added the term "vendor fiscal/employer agent" with a clarifying definition. The agency clarified that an LAR includes the parent of a minor and the guardian of a minor and added a definition of "local authority." The agency did not further explain the terms "consanguinity" and "affinity" in the definition of "relative" because they have their ordinary meanings. The agency will explain the terms in policy.

Comment: One commenter suggested that §41.205(e) does not address initiation of services for a new consumer. The commenter stated that the case manager or service coordinator should identify, using Form 1582, whether a DR is needed prior to initiation of the referral for CDS. After initiation of the referral or after services have started, the FMSA should be responsible for identifying and documenting employers who cannot meet employer responsibilities and need a DR.

Response: The agency responds that the appointment of a DR at CDS enrollment is addressed in §41.109, which describes the role of the case manager or service coordinator in assisting an individual to complete the self-assessment on Form 1582. The individual must appoint a DR at CDS enrollment if the individual cannot complete the self-assessment. The agency has clarified that the requirements in §41.205(b) apply when an employer chooses a DR while receiving services or at CDS enrollment by

adding a reference to §41.109. The agency also added a reference to the FMSA in §41.205(e) to clarify that an FMSA can recommend that an individual appoint a DR after services have begun.

Comment: Regarding §41.206, two commenters suggested that the case manager obtain the initial and annual proof of guardianship. The commenters' concerns seemed to imply that the rule requires a guardianship.

Response. The agency did not revise the rule because the guardian should have the guardianship documentation and providing the information directly to the FMSA avoids the additional step of providing information to the case manager or service coordinator first. The agency revised the rule to clarify that the documentation is provided upon CDS enrollment and the beginning of each service plan year. The agency clarified that the rule applies only if the individual has a court-appointed guardian. The rule does not require that a guardian be appointed.

Comment. Regarding §41.206, two commenters asked what represents proof of effort to obtain documentation of guardianship.

Response. The agency responds that guardianship is explained in Chapter XIII of the Probate Code. Because proof of efforts to obtain documentation of guardianship may vary from case to case, the agency did not revise the rule to add specific requirements for proof of effort. A letter to the court requesting current letters of guardianship is an example of proof of effort. No change was made to the rules in response to the comment.

Comment. Regarding §41.206, one commenter asked how long documentation related to guardianship must be maintained.

Response. The agency did not make a change to the section because the documentation retention requirement is in §41.339.

Comment: Regarding §41.225 and §41.323, three commenters asked questions about approved methods to send criminal history check information to the CDS employer and asked whether fax is an approved method. One commenter asked whether there can be any copies of the criminal history information. The commenters did not suggest revisions to the rule.

Response. The agency did not revise the rule requiring the FMSA to send information using a DPS-approved secure method of dissemination. DPS requires an FMSA to adhere to security requirements and sign a security agreement to access criminal history information. Secure transmission includes sending the original information by certified mail or DPS-approved encrypted e-mail to the employer. A fax is not allowed. Before implementation of the rule, the agency will revise the DADS Form 1725 and provide policy guidance to the FMSAs for explaining security requirements to a CDS employer. It is the agency's understanding that DPS does not allow copies of the criminal history record information.

Comment. Regarding §41.225, two commenters asked what is acceptable documentation that a criminal history check was conducted and that the information was sent to the CDS employer. The commenters did not suggest revisions to the rule.

Response. The agency notes that §41.225 and §41.323 require an FMSA to keep the DADS Form 1725 which will serve as documentation that the FMSA conducted a criminal history check and sent the information to the CDS employer.

Comment. Regarding §41.225, one commenter noted that DADS Form 1725 may need revision because the rules do not

reference the employer obtaining criminal history information through the DPS public website. The commenter did not suggest revisions to the rule.

Response: The agency will revise DADS Form 1725 to reflect that the FMSA is responsible for obtaining the criminal history information rather than the option for the applicant or the CDS employer to obtain the criminal history information. No changes were made to the rules in response to this comment.

Comment: Regarding §41.225 and §41.323, one commenter noted that if there are costs associated with sending the criminal history information and educating CDS employers on handling the information, then there will be a fiscal impact on a CDS employer's budget. The commenter did not suggest revisions to the rule.

Response: The agency responds that the effect on the employer's budget will be negligible and costs can be shifted to the employer support funds without rearranging the entire budget. The cost of using the DPS secure website is less than using the public website. No changes were made to the rule in response to the comment.

Comment: Regarding §41.225, one commenter stated that sending a document using certified mail adds significant cost to the process. The commenter did not suggest revisions to the rule.

Response: The agency notes that DPS defines the methods by which the information may be disseminated. Health and Safety Code, Chapter 250 requires the FMSA to forward criminal history report information to the CDS employer. No changes were made in response to this comment.

Comment: One commenter noted an apparent conflict in that §41.225 states the CDS employer must receive the original criminal history information before hiring an applicant while §41.323 states the FMSA must send the criminal history information if the CDS employer requests it.

Response: The agency agrees that the rule is not clear and revised §41.225 to state that the CDS employer must receive the original criminal history information before hiring the applicant if it is requested.

Comment: Regarding §41.227, one commenter asked what documentation the FMSA is required to keep in addition to DADS Form 1725.

Response: The agency responds that DADS Form 1725 is the only documentation the FMSA is required to keep for a registry check. No changes were made in response to this comment.

Comment: Regarding §41.303, two commenters asked the meaning of the statement that the FMSA assumes full IRS tax liability. One of the commenters suggested changes to the rule to address the situation when a CDS employer already has a Federal Employer Identification Number (FEIN).

Response: The agency notes that the statement regarding IRS tax liability was provided as information in the proposed rule section-by-section summary and is not in the rule. Therefore, no rule revision is necessary. The agency agrees with the concern regarding an existing FEIN and revised the rule to allow the FMSA to ask whether the employer is using the CDS FEIN for other purposes. The agency also revised the rule to require the FMSA to keep a copy of an executed IRS Form SS-4 or other documentation provided by an individual who already has an FEIN.

Comment: One commenter asked if §41.303 has a timeframe for the FMSA to revoke IRS and TWC agent status when an individual no longer qualifies as an employer or transfers to another FMSA.

Response: The agency added a 30 calendar day time frame to revoke agent status.

Comments: Regarding §41.305, two agencies provided comments to clarify that DADS Form 1720 should be used to notify the employer "if" rather than "that" the DR has a criminal conviction that bars employment and to clarify that DADS Form 1721 should be used to revoke the appointment of a DR.

Response: The agency agrees with the comments and changed the rule accordingly.

Comment: Regarding §41.306, one commenter suggested obtaining the guardianship document on expiration and one commenter suggested the case manager or service coordinator provide the documentation.

Response: The agency revised the rule to require guardianship documentation at enrollment and the beginning of each service plan year. With regard to the suggestions that the service coordinator or case manager provide the documentation, the agency did not revise the rule because the guardian should have the guardianship documentation and providing the information directly to the FMSA avoids the additional step of providing information to the case manager or service coordinator first.

Comment: One commenter asked how the retention of records requirement applies to verifying qualifications of employment applicants in §41.309, because criminal history records must be destroyed.

Response: The agency responds that an employer is required to maintain a copy of DADS Form 1725. No changes were made in response to this comment.

Comments: Regarding §41.325, one commenter asked what is acceptable documentation for documenting and maintaining documentation of the results of a criminal history check and one commenter asked whether the check documentation on DADS Form 1725 is sent initially, annually, or monthly. A commenter also noted that the term "aide" was misspelled.

Response: The agency changed the title of §41.325 from "Required Registry Checks" to "Required Registry Checks of an Applicant to be an Employee" to indicate that it refers to actions to take place before an applicant becomes an employee; clarified that the FMSA must send a DADS Form 1725 for each applicant to the employer before an applicant is hired; and removed §41.325(f) pertaining to ongoing employment checks rather than applicant checks. Ongoing registry and exclusion list checks and documentation requirements are addressed in §41.329. The agency also corrected the spelling error. The agency notes that DADS Form 1725 is the acceptable documentation of the criminal history and registry checks.

Comments: Regarding §41.327, one commenter questioned the verification of the social security number requirement, indicating that it was asking for more than is legally required by the I-9. The commenter asked if the 9 digit number on the I-766 ID card can be verified and used.

Response: The agency revised the rule to require the FMSA, when an applicant is hired, to review DADS Form 1724, New Service Provider Packet Cover Sheet, and any required supporting documentation provided by the employer, DR, or service

provider, including the social security number, and inform the employer if an offer of employment must be withdrawn based on results of US Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification or regulations of any government agency. This clarification mirrors §41.231, the employer's role related to verification of eligibility of an employee or contractor. A valid social security number is required for new hire reporting, reporting wages and paying taxes. The agency revised the rule to require the FMSA to verify social security numbers for new hires with the Social Security Administration.

Comment: Regarding §41.327, one commenter expressed concern about the requirement that the FMSA verify that the applicant or employee meets eligibility, licensure, certification, or training requirements and suggested this is the responsibility of the employer. One commenter asked whether the requirement that the FMSA get renewed license or certification from the employer applies to Cardiopulmonary Resuscitation (CPR) certification required by the DADS CLASS program.

Response: The agency notes that the CDS employer role is outlined in the existing rules. As described in the existing rules at §41.229 and §41.231, it is the responsibility of the CDS employer, DR, or applicant to provide the FMSA the required information for each applicant. The role of the FMSA is to review the information to determine if each applicant meets eligibility, licensure, certification or training requirements, including CPR, to deliver the service.

Comment: Regarding §41.329, one commenter noted the misspelling of the word "aide."

Response: The agency has corrected the spelling.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §41.103

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

#### §41.103. *Definitions.*

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

- (1) Adult--A person who is 18 years of age or older.
- (2) Actively involved--Involvement with an individual that the individual's service planning team deems to be of a quality nature based on the following:
  - (A) observed interactions of the person with the individual;
  - (B) a history of advocating for the best interests of the individual;
  - (C) knowledge and sensitivity to the individual's preferences, values, and beliefs;



- (D) ability to communicate with the individual; and
- (E) availability to the individual for assistance or support when needed.

(3) Allowable cost--A billable service or item that is within the rate and spending limits of the rate established by the Health and Human Services Commission and that meets the requirements of an individual's program.

(4) Applicant--Depending on the context, an applicant is:

- (A) a person applying for employment with an employer;
- (B) a person or legal entity applying for a contract with an employer to deliver services to an individual; or
- (C) a person applying for services through a DADS program.

(5) Budget--A written projection of expenditures for each program service delivered through the CDS option.

(6) Budgeted unit rate--The unit rate calculated for employee compensation (wages and benefits) in the budgeting process for services delivered through the CDS option. The rate is calculated after employer support services have been budgeted.

(7) Case manager--A person who provides case management services to an individual. The case manager assists an individual who receives program services in gaining access to needed services, regardless of the funding source for the services, and assists with other duties as required by the individual's program.

(8) CDS option--Consumer Directed Services option. A service delivery option in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(9) CDSA--An FMSA.

(10) Contractor--A person, who performs one or more program services, offers service to the general public, performs services for payment, and with whom the CDS employer has a written service agreement. A contractor directs and controls when and how the work is performed as well as the business aspect of the job including expenses and the business relationship. A contractor may be a sole proprietor.

(11) DADS--The Department of Aging and Disability Services.

(12) DR--Designated representative. A willing adult appointed by the employer to assist with or perform the employer's required responsibilities to the extent approved by the employer.

(13) Employee--A person employed by an employer through a service agreement to deliver program services and who is paid an hourly wage for those services.

(14) Employer--An individual or LAR who chooses to participate in the CDS option, and, therefore, is responsible for hiring and retaining service providers to deliver program services.

(15) Entity--An organization that has a legal identity such as a corporation, limited partnership, limited liability company, professional association, or cooperative.

(16) Employer support services--Services and items the employer needs to perform employer and employment responsibilities, such as office equipment and supplies, recruitment, and payment of Hepatitis B vaccinations for employees and support consultation.

(17) EVV system--Electronic visit verification system. As defined in §68.102(7) of this title (relating to Definitions), an electronic visit verification system that:

- (A) allows a service provider to electronically report:
  - (i) the service recipient's identity;
  - (ii) the service provider's identity;
  - (iii) the date and time the service provider begins and ends the delivery of services;
  - (iv) the location of service delivery; and
  - (v) tasks performed by the service provider; and
- (B) meets other guidelines described on the DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(18) FMS--Financial management services. Services delivered by the FMSA to an employer such as orientation, training, support, assistance with and approval of budgets, and processing payroll and payables on behalf of the employer.

(19) FMSA--A financial management services agency. An entity that contracts with DADS to provide financial management services (FMS).

(20) Individual--A person enrolled in a program.

(21) LAR--Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent of a minor, guardian of a minor, managing conservator of a minor, or the guardian of an adult.

(22) Local authority--An entity as described in Texas Health and Safety Code §531.002(11) to which the executive commissioner of the Health and Human Services Commission has delegated authority and responsibility in accordance with Texas Health and Safety Code §533.035(a).

(23) Minor--A person who is 17 years of age or younger.

(24) Non-program resource--A resource other than an individual's program that provides one or more services or items.

(25) Parent--A natural, legal, foster, or adoptive parent of a minor.

(26) Program--A community services program administered by DADS.

(27) Relative--A person related to an employer within the fourth degree of consanguinity or within the second degree of affinity.

(28) Service agreement--A written agreement or acknowledgment between two parties that defines the relationship and lists respective roles and responsibilities.

(29) Service area--A geographic area served by a program or specified in a contract with DADS.

(30) Service back-up plan--A documented plan to ensure that critical program services delivered through the CDS option are provided to an individual when normal service delivery is interrupted or there is an emergency.

(31) Service coordinator--An employee of a local authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including DADS program services. A service coordinator provides case management services to an individual.

(32) Service plan--A document developed in accordance with rules governing an individual's program that identifies the program services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(33) Service planning team--A group of people determined based on the requirements of an individual's program. Some DADS programs refer to the service planning team as an interdisciplinary team.

(34) Service provider--An employee, contractor, or vendor.

(35) Support advisor--A person who provides support consultation to an employer, or a DR, or an individual receiving services through the CDS option.

(36) Support consultation--An optional service that is provided by a support advisor and provides a level of assistance and training beyond that provided by the CDSA through FMS. Support consultation helps an employer to meet the required employer responsibilities of the CDS option and to successfully deliver program services.

(37) Vendor--A person selected by an employer or DR to deliver services, goods, or items, other than a direct service to an individual. Examples of vendors include a building contractor, electrician, durable medical equipment provider, pharmacy, or a medical supply company.

(38) Vendor fiscal/employer agent--The entity responsible for conducting payroll activities, including withholding, filing, and depositing taxes on behalf of an employer in the CDS option in accordance with Section 3504 of the Internal Revenue Service (IRS) code and with IRS Procedure 70-60.

(39) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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

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Kenneth L. Owens

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## SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

### 40 TAC §41.203

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021,

which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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### 40 TAC §§41.205, 41.206, 41.225, 41.227

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§41.205. *Employer Appointment of a Designated Representative.*

(a) An employer may appoint a willing adult as a DR to assist or to perform employer responsibilities. The employer maintains responsibility and accountability for decisions and actions taken by the DR.

(b) If the employer chooses to appoint a DR or change a DR, or is required to appoint a DR at enrollment in the CDS option, as described in §41.109 of this chapter (relating to Enrollment in the CDS Option), the employer must complete DADS Form 1720, Appointment of Designated Representative.

(1) The employer must notify the FMSA by fax or telephone within two working days after the appointment or change of a DR.

(2) If the employer notifies the FMSA by telephone, the employer must fax or mail a copy of Form 1720 to the FMSA within five working days after the appointment or change of a DR.

(c) The employer, if appointing a DR who is not a relative, must:

(1) obtain the DR's information required on the Appointment of Designated Representative Form (Form 1720) and request the FMSA to perform a criminal history background check through the Department of Public Safety's (DPS) public Criminal History Conviction Database website; and

(2) not appoint or retain a DR who is not a relative who:

(A) has a criminal history that indicates the person has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a); or

(B) has a criminal history that indicates the person has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(d) If an employer decides to revoke the appointment of a DR, the employer must:

(1) complete DADS Form 1721, Revocation of Appointment of Designated Representative; and

(2) provide a copy of the completed form to the FMSA within two calendar days after the effective date of the revocation.

(e) Based on documentation provided by the FMSA of an employer's inability to meet employer responsibilities, the service planning team or the FMSA may recommend that the employer designate a DR to assist with or to perform employer responsibilities.

(f) A DR must not:

- (1) sign or represent himself as the employer;
- (2) be paid to perform employer responsibilities;
- (3) be an employee of the employer;
- (4) have a spouse employed by the employer; or
- (5) provide a program service to the individual.

*§41.206. Proof of Guardianship for the Employer.*

If the court has appointed a guardian for an individual enrolled in the CDS option, the court appointed guardian must provide the FMSA, at CDS enrollment and the beginning of each service plan year, with documentation of guardianship or documentation of efforts to obtain documentation from the court.

*§41.225. Criminal History Check of an Applicant for Employment and an Employee.*

(a) Before an applicant can become an employee, an employer or DR must:

(1) obtain the applicant's information required on the Criminal History and Registry Checks Form 1725 to conduct a criminal history background check through the Texas Department of Public Safety (DPS) secure online website;

(2) sign the certification section on Form 1725 acknowledging that criminal history records and reports include confidential information that must not be shared, released, or otherwise disclosed, under penalty of law; and

(3) request that the FMSA obtain the criminal history report from the secure online DPS Criminal History Conviction Database website.

(b) If the employer or DR asks the FMSA to send the criminal history report to the employer or DR, the employer or DR must receive the original criminal history report sent by the FMSA, using a DPS-approved secure method of dissemination, before hiring the applicant.

(c) A criminal history report must be dated no more than 30 calendar days before the applicant's date of hire.

(d) An employer or DR must not hire an applicant or retain an employee who:

(1) has a criminal history that indicates the applicant or employee has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a); or

(2) has a criminal history that indicates the applicant or employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(e) An employer or DR must retain a copy of Form 1725 completed as described in subsection (a)(2) of this section for each employee in accordance with record retention requirements described in §41.243 of this chapter (relating to Record Retention).

(f) An employer or DR, within five calendar days after making the hiring decision, must destroy the criminal history record documents obtained from DPS for all applicants, whether or not hired or retained by the employer or DR, obtained as described in subsection (a)(3) of this section as follows:

(1) for paper records, shredding, pulping, or burning; and

(2) for electronic records, destroying the media or using specialized software to copy over the data.

(g) An employer or DR may, at any time, obtain or request that the FMSA obtain an updated criminal history report for a current employee.

(h) Within five calendar days after receiving a criminal history report from the FMSA under subsection (g) of this section, the employer or DR must destroy the report using a method described in subsection (f) of this section.

(i) An employer or DR must immediately terminate an employee if an updated criminal history report indicates that the employee has been convicted of an offense included in THSC, §250.006(a), or the employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(j) The actual cost of a criminal history report is paid as an employer support service expenditure.

(k) When contracting with an entity, the employer or DR and the entity must complete a service agreement in which the entity certifies that the entity has checked and verified that each person delivering a service to the individual on behalf of the entity has not been convicted of an offense listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years.

*§41.227. Required Registry Checks.*

(a) For each applicant for employment, an employer or DR must:

(1) obtain the applicant's required information on the Criminal History and Registry Checks, (Form 1725) necessary to conduct an initial and annual check of the DADS Nurse Aide Registry and the Employee Misconduct Registry; and

(2) request that the FMSA obtain and document the results of the registry check for an applicant using Form 1725 and send a copy to the employer or DR.

(b) The result of a registry check must be obtained within 30 calendar days before the hire date and within 30 calendar days after each annual employment anniversary.

(c) An employer must not employ an applicant, and must immediately discharge an employee upon verification that the person is listed:

(1) as revoked in the Nurse Aide Registry; or

(2) as unemployable in the Employee Misconduct Registry.

(d) An employer must:

(1) submit to the FMSA, for each applicant, contractor or vendor, the information required to conduct a monthly check of the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the

United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases; and

(2) not employ an applicant, contractor or vendor or immediately discharge an employee, contractor or vendor if listed on the HHSC or the HHS List of Excluded Individuals and Entities.

(e) An employer must obtain and maintain a copy of completed Form 1725 documenting the results of the registry checks.

(f) When contracting with an entity, the employer and the entity must complete a service agreement in which the entity certifies that it has checked and verified that each person delivering a service to the individual on behalf of the contractor is in compliance with, and will maintain compliance with, this section.

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## SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF FINANCIAL MANAGEMENT SERVICES AGENCIES (FMSAS)

**40 TAC §§41.301, 41.303, 41.305 - 41.307, 41.309, 41.323, 41.325, 41.327, 41.329**

The amendments and new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

*§41.301. Contracting as a Financial Management Services Agency.*

(a) DADS enters into a contract with an entity, including a sole proprietor, to be an FMSA in accordance with Chapter 49 of this title (relating to Contracting for Community Care Services).

(b) An FMSA must operate as a Vendor Fiscal/Employer Agent (VF/EA) in accordance with §3504 of the Internal Revenue Service (IRS) Code.

(c) An FMSA must not use a third party to file and report payroll taxes to the IRS on behalf of a CDS employer.

(d) To contract as an FMSA, an entity must:

(1) have key operations staff, including the program manager and payroll staff employed by the FMSA complete pre-enrollment FMSA training provided or authorized by DADS and pass a test provided or authorized by DADS to demonstrate the knowledge and skills needed to provide FMS; and

(2) have at least one employee or contractor qualified as a support advisor and available to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities).

(e) An FMSA must not provide FMS and case management services to the same individual, except in the Client Managed Personal Attendant Services program. An FMSA must not be a related party for common ownership or control of the provider of case management. DADS evaluates common ownership and control in accordance with 1 TAC §355.102(i) (relating to General Principles of Allowable and Unallowable Costs).

(f) An FMSA must participate in all mandatory training provided or authorized by DADS.

*§41.303. Obtaining and Revoking Federal and State Approval to be a Vendor Fiscal/Employer Agent.*

(a) An FMSA must apply for and obtain one Federal Employer Identification Number (FEIN) for the sole purpose of filing and depositing federal income tax withholding and employment taxes (i.e., Medicare and Social Security (FICA) and Federal Unemployment Insurance taxes) on behalf of employers it represents as a vendor fiscal/employer agent. The one FEIN must cover all states and programs under which the entity functions as a FMSA.

(b) An FMSA must obtain IRS approval to act as an agent for each employer it represents by:

(1) obtaining, within 30 calendar days after the employer enrolls into the CDS option, a separate FEIN for each employer it represents by completing and submitting an IRS Form SS-4, Application for Employer Identification Number unless the employer uses an existing FEIN for the CDS option;

(2) requesting that the employer, who uses an existing FEIN for the CDS option, inform the FMSA if the FEIN is being used for other purposes;

(3) retaining a copy of an executed IRS Form SS-4 or other documentation provided by the CDS employer who already has an FEIN for each employer on file;

(4) applying for and receiving agent authorization from the IRS by completing and submitting an IRS Form 2678, Employer/Payer Appointment of Agent, within 30 calendar days after the employer enrolls into the CDS option, for each employer it represents; and

(5) retaining a copy of executed IRS Form 2678 for each employer on file.

(c) The FMSA must register as a reporting agent with the Texas Workforce Commission (TWC) for the sole purpose of filing and depositing state unemployment taxes.

(d) The FMSA must revoke the FMSA's IRS and TWC agent status within 30 calendar days after becoming aware that the person no longer qualifies for the program, the employer no longer qualifies to be an employer, the individual transfers to another FMSA, or the individual no longer uses the CDS option.

*§41.305. Appointment of a Designated Representative.*

(a) The FMSA must, if the employer requests to appoint a person who is not a relative as DR, use the information provided by the em-

ployer on the Appointment of Designated Representative form (Form 1720) to:

(1) obtain the criminal history information directly from the Texas Department of Public Safety's (DPS) public online criminal history website; and

(2) notify the employer, using Form 1720, if the DR has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a), or has been convicted of an offense included in THSC, §250.006(b) within the previous five years and cannot be appointed as DR.

(b) An FMSA must maintain the following documentation regarding an employer's DR:

(1) Form 1720, Appointment of a Designated Representative, for:

(A) initial designations; and

(B) any change to an appointment of a DR; and

(2) Form 1721, Revocation of Representative, if the employer elects to revoke the appointment of a DR.

(c) An FMSA must communicate with and accept direction from the employer's DR to the extent delegated by the employer on Form 1720.

*§41.306. Proof of Guardianship for Financial Management Services Agencies.*

An FMSA must obtain at CDS enrollment and the beginning of each service plan year from the court appointed guardian of an individual using the CDS option, current documentation of guardianship or documentation of the guardian's efforts to obtain documentation from the court. The FMSA must maintain the documentation.

*§41.323. Criminal History Check of an Applicant for Employment and to be an Employee.*

(a) The FMSA must ensure that the employer or DR signs the Criminal History and Registry Checks form (Form 1725) acknowledging that criminal history reports are confidential and must not be shared, released, or otherwise disclosed, under penalty of law.

(b) The FMSA must, using the applicant information provided by the employer on the Criminal History and Registry Checks Form (Form 1725):

(1) obtain the criminal history record information directly from the Texas Department of Public Safety's (DPS) secure online criminal history website within two working days after the CDS employer or DR requests the information; and

(2) if requested by the CDS employer or DR, using a DPS-approved secure method, send the original printed document of the criminal history record information to the employer within two working days after receiving the request.

(c) The criminal history report must not be dated more than 30 calendar days before the date the applicant is hired.

(d) The FMSA must review the criminal conviction history on each applicant and notify the employer or DR in writing, using the Criminal History Registry Checks form (Form 1725), if the applicant has been convicted of an offense listed in Texas Health and Safety Code (THSC), §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, and the applicant must not be hired or retained.

(e) The FMSA must maintain a copy of the Criminal History and Registry Checks form (Form 1725) for an applicant hired by an employer or DR.

(f) The FMSA, within five calendar days after the hiring decision, must destroy the criminal history record information obtained from DPS as described in subsection (b)(1) of this section for all applicants, whether or not hired or retained by the employer or DR, as follows:

(1) for paper records, shredding, pulping, or burning; and

(2) for electronic records, destroying the media or using specialized software to copy over the data.

(g) The FMSA must obtain an updated criminal history check for an employee, if requested by the employer or DR. If the results of the updated check indicate the employee has been convicted of an offense listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, the FMSA must notify the employer or DR that the person must be terminated immediately as an employee.

(h) Within five calendar days after obtaining the criminal history report under subsection (g) of this section, the FMSA must destroy the report using a method described in subsection (f) of this section.

(i) The cost of a criminal history check and other background checks must be budgeted by the employer or DR in accordance with §41.225 of this chapter (relating to Criminal History Check of an Applicant for Employment and an Employee). The reimbursement for each criminal history check is paid as an employer support service expenditure at actual cost noted on the receipt to the FMSA that purchased the DPS criminal history check.

*§41.325. Required Registry Checks of an Applicant to be an Employee.*

(a) For each applicant for delivery of services through the CDS option as an employee, an FMSA must:

(1) check DADS' Nurse Aide Registry and Employee Misconduct Registry not more than 30 calendar days prior to the hire date;

(2) document and maintain the results of each applicant registry check on Form 1725, Criminal Conviction History and Registry Check; and

(3) provide a copy of completed Form 1725 for each applicant to the employer.

(b) For each applicant for delivery of services through the CDS option as an employee, contractor, or vendor, an FMSA, prior to hiring, must:

(1) check the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases; and

(2) document the results and retain the documentation on file.

(c) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code Federal Regulations §1003.102(a)(2), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.

(d) The FMSA must obtain a copy of Form 1725 documenting the results of the registry checks if the employer or DR directly conducts a check of the registries.

(e) The FMSA must not approve an applicant for employment or for a contract or a vendor upon verification that the person is listed:

- (1) as revoked in the Nurse Aide Registry;
- (2) as unemployable in the Employee Misconduct Registry; or
- (3) on the HHSC or HHS list of excluded individuals or entities.

§41.327. *Verification of Applicants for Employees, Contractors, and Vendors.*

(a) For each applicant for delivery of services through the CDS option as an employee, contractor, or vendor, the FMSA must:

- (1) obtain and review documentation from the employer, DR, or applicant that is required to verify each required qualification of the applicant;
- (2) notify the employer or DR of required documentation not received;
- (3) notify the employer or DR using the Verification of Applicant Form (DADS Form 1729) within three working days after receipt of all required documentation that the applicant is or is not qualified to be hired or retained for delivery of the specific service or services; and
- (4) retain documentation on file if the applicant is hired or retained by the employer or DR for service delivery.

(b) The FMSA must review documentation provided by the employer, DR, applicant, or service provider, to determine if the applicant or service provider meets eligibility, licensure, certification or training requirements of the individual's program and government regulations to deliver an intended service and that the planned service meets those requirements.

(c) Before services can be delivered, the FMSA must review Form 1724, New Service Provider Packet Cover Sheet, and any required supporting documentation provided by the employer, DR, or service provider and notify the employer, within two working days, to withdraw an offer of employment if the service provider is not eligible for employment based on results of reviewing the US Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification or regulations of any government agency.

(d) Before services can be delivered, the FMSA must verify an employee's or a contractor's social security number with the Social Security Administration.

(e) The FMSA must not pay for services delivered if the FMSA has not provided written notice to the employer or DR of the service provider's eligibility even if the service provider is determined later by the FMSA to be eligible.

(f) The FMSA must pay, but not claim reimbursement through DADS, for services delivered if the FMSA notified the employer or DR in error that the applicant was eligible.

(g) If an applicant has previously been terminated by the employer or DR, the employer or DR and the FMSA must complete the eligibility process as a new applicant.

§41.329. *Continued Eligibility of an Employee, Contractor, or Vendor.*

- (a) For each employee, contractor, or vendor, an FMSA must:
- (1) obtain from the employer, DR, or service provider a copy of a renewed license or certificate, if required by the individual's

program, within 30 calendar days after the expiration date of the current document on file required to maintain qualifications;

- (2) notify the employer or DR to send required documentation to the FMSA, if not received within the 30 days;
- (3) notify the employer or DR in writing within three working days after receipt of all required documentation if the service provider is not qualified to continue service delivery; and
- (4) retain the documentation on file.

(b) The FMSA must obtain and retain documentation on file that the service provider continues to meet qualifications as required by the individual's program rules, policies, and manuals, and other state and federal regulations including:

- (1) an annual check of DADS Nurse Aide Registry and Employee Misconduct Registry; and
- (2) a monthly check of the Texas Health and Human Services Commission (HHSC) - Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) - OIG Excluded Individuals/Entities Search online searchable databases.

(c) The FMSA must notify the employer or DR in writing to immediately terminate a service provider if the person is:

- (1) listed as revoked in the Nurse Aide Registry;
- (2) listed as unemployable in the Employee Misconduct Registry; or
- (3) is listed on the HHSC or HHS List of Excluded Individuals and Entities.

(d) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code of Federal Regulations §1003.102(a)(2)), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.

(e) The FMSA must obtain an updated criminal conviction history check for an employee, if requested by the employer or DR. If the results of the updated check indicate the person has been convicted of a crime listed in Texas Health and Safety Code (THSC), §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, the FMSA must notify the employer or DR that the person must be terminated immediately as an employee.

(f) The FMSA must not pay for services delivered by a service provider if the FMSA has not documented continuing qualifications for service delivery to the employer or DR, even if the service provider is determined later by the FMSA to be qualified.

(g) The FMSA must pay, and not claim reimbursement through DADS, for services delivered by a service provider if the FMSA had notified the employer or DR in error that the service provider was qualified.

(h) The FMSA must not pay, and must not claim reimbursement from DADS, for services delivered on dates that the service provider was not eligible.

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

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## SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF CONSUMER DIRECTED SERVICES AGENCIES

### 40 TAC §41.303

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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## CHAPTER 94. NURSE AIDES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §§94.1 - 94.11; and new §§94.1 - 94.12 in Chapter 94, concerning Nurse Aides. New §§94.3 - 94.6 and §§94.8 - 94.10 are adopted with changes to the proposed text published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1855). The repeal of §§94.1 - 94.11; and new §§94.1, 94.2, 94.7, 94.11, and 94.12 are adopted without changes to the proposed text.

The new sections are adopted to clarify existing processes and requirements, reorganize information, and update terminology regarding nurse aides. Sections previously in Chapter 94 are repealed to allow for the adoption of the new sections.

The new sections also implement provisions of Senate Bill (S.B.) 795, 82nd Legislature, Regular Session, 2011, which added Texas Health and Safety Code (THSC) §250.0035. THSC §250.0035 requires an applicant to complete 100 hours of training in a Nurse Aide Training and Competency Evaluation

Program to be listed on the nurse aide registry. In addition, THSC §250.0035 requires a nurse aide to complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, in the care of patients with Alzheimer's disease, to renew the nurse aide's listing on the nurse aide registry.

In addition, the new sections implement provisions of S.B. 1733, 82nd Legislature, Regular Session, 2011, which added Texas Occupations Code §55.004, requiring state agencies to develop alternative licensing procedures for spouses of members of the armed forces under certain circumstances.

DADS received written comments from four individuals. A summary of the comments and the response follows.

Comment: Concerning §94.3 and §94.9, relating to nurse aide training in the care of residents with Alzheimer's disease, four commenters requested that the phrase "if applicable" be deleted from the rule text and the term "Alzheimer's disease" be replaced with the term "dementia disorder" to broaden the training requirement since over 50 percent of nursing facility residents have a dementia disorder including Alzheimer's disease.

Response: The agency agrees with the commenters and has deleted the phrase "if applicable" in §94.3 and §94.9 to make care of residents with a dementia disorder a required component of the training described in those sections. The sections have been reworded to include the term "dementia disorder" and broaden the training requirement for nurse aides to receive training in the care of residents with Alzheimer's disease as well as other dementia related disorders.

### 40 TAC §§94.1 - 94.11

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §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.

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### 40 TAC §§94.1 - 94.12

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §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.

*§94.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.*

(a) To train nurse aides, a facility must apply for and obtain approval from DADS to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with DADS.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each classroom location.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) DADS does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to DADS in accordance with §94.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. DADS may withdraw the application within two years of approving it if DADS determines that the facility is no longer prohibited from offering a NATCEP.

(h) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:

(1) 51 hours of classroom training; and

(2) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(i) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(j) A NATCEP must teach the curriculum established by DADS and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;



- (B) awareness of developmental tasks associated with the aging process;
- (C) how to respond to a resident's behavior;
- (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
- (E) using a resident's family as a source of emotional support;
- (9) care of cognitively impaired residents, including:
  - (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;
  - (B) communicating with a cognitively impaired resident;
  - (C) understanding the behavior of a cognitively impaired resident;
  - (D) appropriate responses to the behavior of a cognitively impaired resident; and
  - (E) methods of reducing the effects of cognitive impairments;
- (10) basic restorative services, including:
  - (A) training a resident in self care according to the resident's abilities;
  - (B) use of assistive devices in transferring, ambulation, eating, and dressing;
  - (C) maintenance of range of motion;
  - (D) proper turning and positioning in bed and chair;
  - (E) bowel and bladder training; and
  - (F) care and use of prosthetic and orthotic devices; and
- (11) a resident's rights, including:
  - (A) providing privacy and maintenance of confidentiality;
  - (B) promoting the resident's right to make personal choices to accommodate their needs;
  - (C) giving assistance in resolving grievances and disputes;
  - (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
  - (E) maintaining care and security of the resident's personal possessions;
  - (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
  - (G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain DADS approval. The program director and program instructor must meet the requirements of §94.5(a) and (b)

of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

- (l) A NATCEP must verify that a trainee:
  - (1) is not listed on the NAR in revoked status;
  - (2) is not listed as unemployable on the EMR;
  - (3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP.
- (m) A NATCEP must ensure that a trainee:
  - (1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;
  - (2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;
  - (3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;
  - (4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor;
  - (5) is clearly identified as a trainee during the clinical training portion of the NATCEP.
- (n) A NATCEP must submit a NATCEP application to DADS if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until DADS approves the change. DADS conducts a review of the NATCEP information if DADS determines the changes are substantive.
- (o) A NATCEP must use a DADS performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.
- (p) A NATCEP must maintain records and make them available to DADS or its designees at any reasonable time. The records must include:
  - (1) dates and times of all classroom and clinical training;
  - (2) full name and social security number of a trainee;
  - (3) attendance record of a trainee;
  - (4) final course grade for the training portion of the NATCEP that indicates pass or fail for a trainee; and
  - (5) daily sign-in records for classroom and clinical training.
- (q) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.
- (r) DADS reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.
- (s) DADS must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(t) DADS approval of a NATCEP only applies to the required curriculum and hours. DADS does not approve additional content or hours.

(u) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(v) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

*§94.4. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

(a) A person that wants to offer a NATCEP must complete a NATCEP application on forms prescribed by DADS and submit the application to DADS.

(b) DADS determines whether to approve or deny the NATCEP application.

(c) Within 90 days after DADS receives a complete NATCEP application, DADS notifies a NATCEP applicant of approval or proposed denial of a NATCEP application, or notifies the applicant of a deficiency or error in accordance with subsection (d) of this section. If DADS proposes to deny the application due to the applicant's non-compliance with the requirements of the Act or this chapter, DADS provides the reason for the denial in the notice.

(d) If DADS finds a deficiency or error in a NATCEP application, DADS notifies the applicant in writing of the deficiency or error and gives the applicant an opportunity to correct the deficiency or error. The applicant must submit the additional or corrected information to DADS, in writing, within 10 days after the applicant receives notice of the deficiency or error.

(e) If DADS proposes to deny a NATCEP application based on the NATCEP's failure to comply with §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements), or §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant may request a hearing to challenge the denial. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If an applicant does not make a timely request for a hearing, the applicant waives a hearing and DADS may deny the NATCEP application.

*§94.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.*

(a) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain DADS approval.

(1) The program director must:

(A) be an RN in the state of Texas;

(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a facility; and

(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing (DON) for the facility may be approved as the program director, but must not conduct the training.

(3) A program director may supervise more than one NATCEP.

(4) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed the training portion of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed the training portion of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the facility, stating that the trainee passed the training portion of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with DADS.

(5) A NATCEP must submit a NATCEP application for DADS approval if the program director of the NATCEP changes.

(b) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter and when training occurs.

(1) A program instructor must:

(A) be a licensed nurse;

(B) have a minimum of one year of nursing experience in a facility;

(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and

(D) work under the general supervision of the program director or be the program director.

(2) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(3) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in paragraph (1)(A) - (D) of this subsection.

(4) A NATCEP must submit a NATCEP application for DADS approval if a program instructor of the NATCEP changes.

(c) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without DADS approval. To request approval, a NATCEP must submit a NATCEP application to DADS.

(d) Skills examiner. A skills examiner must administer a competency evaluation.

(1) DADS or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by DADS or its designee.

(2) A skills examiner must:

(A) adhere to DADS standards for each skill examined;

(B) conduct an competency evaluation in an objective manner according to the criteria established by DADS;

(C) validate competency evaluation results on forms prescribed by DADS;

(D) submit prescribed forms and reports to DADS or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

#### §94.6. Competency Evaluation Requirements.

(a) A skills examiner must administer a competency evaluation.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §94.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the location where the trainee received training, the trainee may take a competency evaluation at another approved NATCEP that offers the competency evaluation and accepts the trainee for a competency evaluation.

(d) An eligible trainee who does not take a competency evaluation at the location where the trainee received training must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange with another approved NATCEP to take the competency evaluation and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;

(2) offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP;

(3) administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;

(4) schedule a competency evaluation; and

(5) ensure that trainees accurately complete competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for competency evaluations;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by DADS or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete a NATCEP, a trainee must pass:

(1) the skills demonstration, as determined by DADS; and

(2) the written or oral examination, as determined by DADS.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) DADS informs a trainee before taking a competency evaluation that DADS records successful completion of the competency evaluation on the NAR.

(l) DADS records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §94.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A facility must not charge a nurse aide for any portion of a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide takes the competency evaluation.

(o) DADS reimburses a nurse aide for a portion of the costs incurred by the nurse aide to take a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after taking the competency evaluation.

*§94.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

(a) DADS immediately withdraws approval of a facility-based NATCEP if the facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than \$5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by DADS.

(b) DADS withdraws approval of a NATCEP if the NATCEP does not comply with §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If DADS withdraws approval of a NATCEP for failure to comply with §94.3 of this chapter, DADS does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If DADS proposes to withdraw approval of a NATCEP based on subsection (a) of this section, DADS notifies the NATCEP by certified mail of the facts or conduct alleged to warrant the withdrawal. DADS mails the notice to the facility's last known address as shown in DADS records.

(e) A dually certified facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 Code of Federal Regulations (CFR), Part 498.

(f) A facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act), except the facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by DADS is overturned, DADS rescinds the denial of approval of the NATCEP.

(i) If DADS proposes to withdraw approval of a NATCEP based on §94.3 of this chapter or §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and DADS may withdraw the approval.

(j) A trainee who started a NATCEP before DADS sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

*§94.9. Nurse Aide Registry and Renewal.*

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §94.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) DADS does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform DADS of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a DADS Employment Verification form to DADS that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a DADS Employment Verification form to DADS to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) Effective September 1, 2013, a nurse aide must complete at least 24 hours of in-service education every two years that includes training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease, to renew a listing of active status on the NAR.

(4) In-service education for renewal of a listing on the NAR must be completed in a facility or an approved NATCEP.

*§94.10. Expiration of Active Status.*

(a) A nurse aide's status on the NAR is changed to expired if:

(1) the nurse aide has not performed nursing-related services or acted as a nurse aide for monetary compensation for 24 consecutive months; or

(2) effective September 1, 2013, the nurse aide has not completed 24 hours of in-service education during the preceding two years.

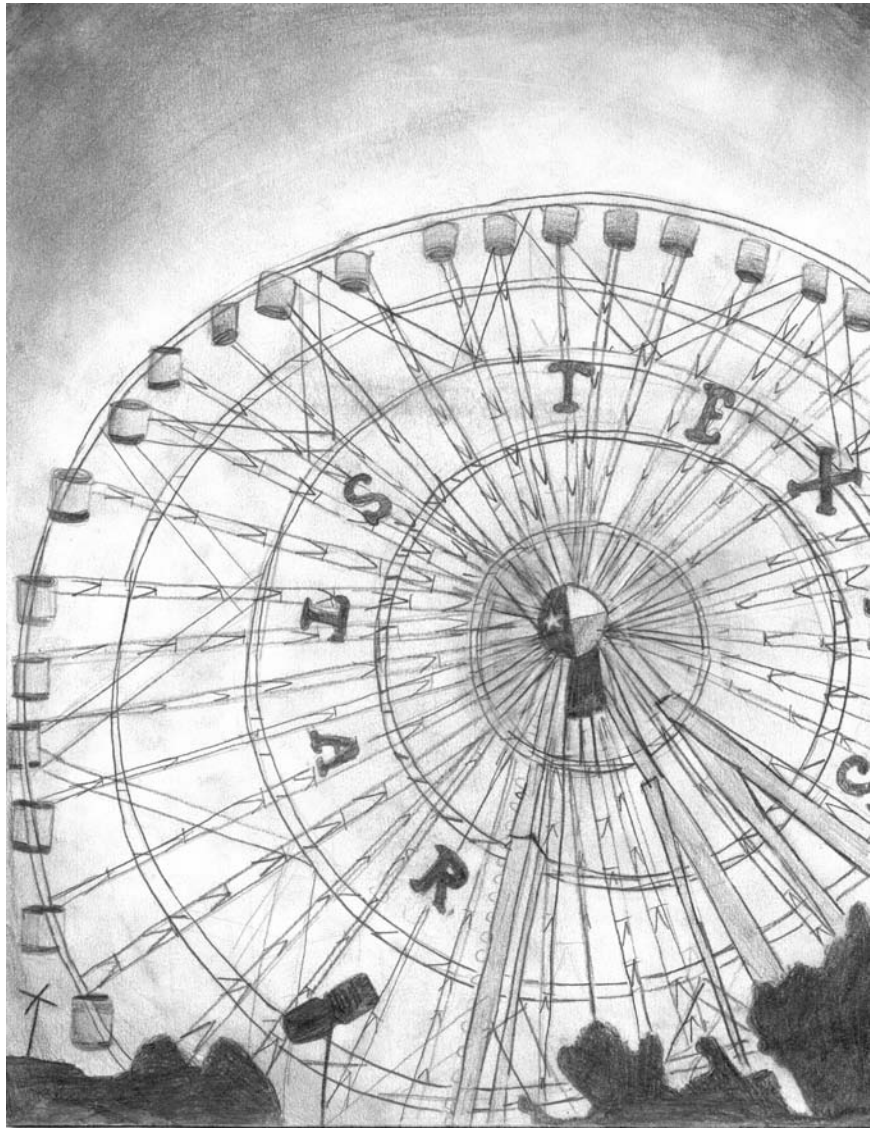
(b) A nurse aid whose status is listed as expired must complete a NATCEP or a competency evaluation to be listed on the NAR with active status.

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 June 7, 2013.

TRD-201302319  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Effective date: June 27, 2013  
Proposal publication date: March 15, 2013  
For further information, please call: (512) 438-3734





# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Department of Information Resources

### Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 205, §§205.1 - 205.3, 205.10, and 205.20, concerning Geographic Information Standards. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to [martin.zelinsky@dir.texas.gov](mailto:martin.zelinsky@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201302306  
Martin H. Zelinsky  
General Counsel  
Department of Information Resources  
Filed: June 6, 2013



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 215, §§215.1 - 215.3 and 215.10, concerning Statewide Technology Centers for Data and Disaster Recovery Services. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to [martin.zelinsky@dir.texas.gov](mailto:martin.zelinsky@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice

in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201302307  
Martin H. Zelinsky  
General Counsel  
Department of Information Resources  
Filed: June 6, 2013



Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

In accordance with the Texas Government Code §2001.039, the Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision or repeal all sections within 28 TAC Chapter 144, Dispute Resolution.

Subchapter A. Arbitration.

- §144.1. Authority and Duties of Arbitrators.
- §144.2. Ex Parte Communications.
- §144.3. Delivery of Copies of Documents.
- §144.4. Election to Engage in Arbitration.
- §144.5. Statement of Disputes.
- §144.6. Assignment of Arbitrator.
- §144.7. Setting the Arbitration Proceeding.
- §144.8. Expediting Procedures.
- §144.9. Exchange of Evidence and Proposed Resolution.
- §144.10. Stipulations, Agreements, and Settlements.
- §144.11. Continuance.
- §144.12. Failure to Attend Arbitration.
- §144.13. Rights of Parties.
- §144.14. Usual Order of Proceedings.
- §144.15. Award of the Arbitrator.
- §144.16. Requesting a Copy of the Record.

The Division will consider whether the reasons for adopting these rules continue to exist and whether these rules should be repealed, readopted or readopted with amendments.

If the Division identifies necessary amendments or repeals during this review, the Division will propose those amendments or repeals, in accordance with the 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 by 5:00 p.m. CST, July 22, 2013. Comments may be submitted by email at [RuleReviewComments@tdi.texas.gov](mailto:RuleReviewComments@tdi.texas.gov) or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100,

Austin, Texas 78744-1645. Comments received after 5:00 p.m. CST will not be considered.

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-201302401

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: June 11, 2013





# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §102.1

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
<b>DENTIST</b>							
Application by Exam	\$215.00	\$200.00	\$0.00	\$0.00	\$5.00	\$55.00	\$475.00
Annual Renewal	\$150.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$425.00
Annual Renewal - Late 1 to 90 days	\$225.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$500.00
Annual Renewal - Late 91 to 365 days	\$300.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$575.00
Licensure by Credentials	\$2,800.00					\$55.00	\$2,855.00
Temporary Licensure by Credentials	\$750.00						\$750.00
Faculty Initial Application	\$115.00				\$5.00		\$120.00
Faculty Annual Renewal	\$95.00		\$10.00	\$9.00	\$1.00		\$115.00
Faculty Annual Renewal - Late 1 to 90 days	\$142.50		\$10.00	\$9.00	\$1.00		\$162.50
Faculty Annual Renewal - Late 91 to 365 days	\$190.00		\$10.00	\$9.00	\$1.00		\$210.00
Conversion Fee - Faculty to Full Privilege	\$50.00						\$50.00
Nitrous Oxide and Level 1 Anesthesia Application	\$32.00						\$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	\$10.00						\$10.00
Level 2 thru Level 4 Anesthesia Application	\$60.00						\$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	\$10.00						\$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	\$120.00						\$120.00
Application to Reactivate a Retired License	\$75.00						\$75.00
Duplicate License / Renewal	\$25.00						\$25.00
<b>DENTAL HYGIENIST</b>							
Application by Exam	\$115.00				\$5.00		\$120.00
Annual Renewal	\$100.00		\$6.00	\$2.00	\$1.00		\$109.00
Annual Renewal - Late 1 to 90 days	\$150.00		\$6.00	\$2.00	\$1.00		\$159.00
Annual Renewal - Late 91 to 365 days	\$200.00		\$6.00	\$2.00	\$1.00		\$209.00
Licensure by Credentials	\$630.00						\$630.00
Temporary Licensure by Credentials	\$220.00						\$220.00
Faculty Initial Application	\$115.00				\$5.00		\$120.00
Faculty Annual Renewal	\$83.00		\$6.00	\$2.00	\$1.00		\$92.00
Faculty Annual Renewal - Late 1 to 90 days	\$124.50		\$6.00	\$2.00	\$1.00		\$133.50
Faculty Annual Renewal - Late 91 to 365 days	\$166.00		\$6.00	\$2.00	\$1.00		\$175.00
Conversion Fee - Faculty to Full Privilege	\$50.00						\$50.00
Application to Reactivate a Retired License	\$75.00						\$75.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Duplicate License / Renewal	\$25.00						\$25.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00						\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00						\$10.00
<b>DENTAL ASSISTANT</b>							
Initial Application	\$31.00				\$5.00		\$36.00
Annual Renewal	\$29.00		\$2.00		\$1.00		\$32.00
Annual Renewal - Late 1 to 90 days	\$43.50		\$2.00		\$1.00		\$46.50
Annual Renewal - Late 91 to 365 days	\$58.00		\$2.00		\$1.00		\$61.00
Duplicate License / Renewal	\$25.00						\$25.00
Pit and Fissure Sealant Application	\$30.00						\$30.00
Pit and Fissure Sealant Renewal	\$18.00						\$18.00
Duplicate Pit Fissure Certificate	\$15.00						\$15.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00						\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00						\$10.00
Coronal Polishing Application	\$12.00						\$12.00
Duplicate Coronal Polishing Certificate	\$10.00						\$10.00
<b>DENTAL LABORATORIES</b>							
Application	\$120.00				\$5.00		\$125.00
Annual Renewal	\$131.00		\$3.00		\$1.00		\$135.00
Annual Renewal - Late 1 to 90 days	\$196.50		\$3.00		\$1.00		\$200.50
Annual Renewal - Late 91 to 365 days	\$262.00		\$3.00		\$1.00		\$266.00
Mobile Application	\$120.00						\$120.00
Annual Mobile Renewal	\$60.00						\$60.00
<b>OTHER</b>							
Dentist Intern / Resident Prescription Privileges	\$50.00						\$50.00
Dental Assistant Course Provider	\$100.00						\$100.00
Jurisprudence	\$55.00						\$55.00
Licensure Verification without Seal	\$4.00						\$4.00
Licensure Verification with Seal	\$9.00						\$9.00
Criminal History Letter	\$25.00						\$25.00
Printed Copy - Rules and Regulations	\$20.00						\$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	\$15.00						\$15.00
Printed Consumer Signage	\$5.00						\$5.00

Disposal Rate for the Compact Waste Disposal Facility

**1. Base Disposal Charge:**

<b>1A. Waste Volume Charge</b>	<b>Charge per cubic foot (\$/ft3)</b>
Class A LLW- Routine	\$100
Class A LLW - Shielded	\$250
Class B and C LLW	\$1,000
Sources	\$500
Biological Waste (Untreated)	\$350

<b>1B. Radioactivity Charge</b>	
Curie Inventory Charge (\$/mCi)	\$0.55
Maximum Curie Charge (per shipment) (excluding C-14)	\$220,000 /shipment
Carbon-14 Inventory Charge (\$/mCi)	\$1.00
Special Nuclear Material Charge (\$/gram)	\$100

**2. Surcharges to the Base Disposal Charge:**

<b>2A. Weight Surcharge - Weight (lbs.) of Container</b>	<b>Surcharge (\$/container)</b>
10,000 to 50,000 lbs	\$10,000
Greater than 50,000 lbs	\$20,000

<b>2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container</b>	<b>Surcharge per cubic foot (\$/ft3)</b>
1-5 R/hour	\$100
Greater than 5 to 50 R/hour	\$200
Greater than 50 to 100 R/hour	\$300
Greater than 100 R/hour	\$400

<b>2C. Irradiated Hardware Surcharge</b>	
Surcharge for special handling per shipment	\$75,000 / shipment

<b>2D. Cask (Shielding Waste) Surcharge</b>	
Cask handling surcharge per cask	\$2,500 / cask

Figure: 40 TAC §97.602(h)(2)(D)

<b>SEVERITY LEVEL A VIOLATIONS</b>	
<b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.210(c)(1)-(2); separate penalties	Providing information on how to contact the person in charge if an agency is closed during operating hours or between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.
§97.212	Prohibiting material alteration of a license.
§97.213(a), (b)(1) and (2), and (c); separate penalties	Notification procedures for reporting a change in physical location.
§97.214(a)(1) and (2), (b), and (c); separate penalties	Notification procedures for reporting a change in agency contact information and agency operating hours.
§97.217(b)(1)-(2); separate penalties	Procedures for notifying DADS of a voluntary suspension of operations.
§97.218(a)(1)-(4) and (b); separate penalties	Notification procedures for reporting a change in management personnel.
§97.219(a), (b), and (d); separate penalties	Notification procedures for adding or deleting a category of service to an agency's license.
§97.220(a)	Providing services only within an agency's licensed service area.
§97.220(c) and (d)(2)(A) and (B); separate penalties	Notification procedures for reporting an expansion of an agency's licensed service area.
§97.220(e)	Using the required DADS form and following DADS instructions to provide notice of an expansion or reduction of an agency's licensed service area.
§97.220(g)	Providing written notification of a reduction of an agency's licensed service area.
§97.220(j)(1)	Not reporting an expansion of the service area as required to continue to provide services to an existing client outside the service area.
§97.220(j)(4)	Not documenting the start and end date for services provided to a client outside the service area.
§97.220(k)(1)-(3)	Information an agency must provide to a client if leaving the agency's service area.
§97.242(a)-(b); separate penalties	Preparing and maintaining a current written description of the agency's organizational structure.
§97.243(b)(1)(A)-(E) and (G)-(J); separate penalties	Responsibilities of the administrator.
§97.243(b)(3)	Requirement that the administrator designate in writing an agency employee who must provide DADS surveyors entry to the agency.
§97.243(d)	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(b)(1)-(5); separate penalties	Conditions of the agency administrator and alternate administrator.
§97.245(a)-(b)(1)-(10); separate penalties	Adoption and enforcement of written policies governing all personnel staffed by the agency.
§97.246(a)(1)-(6)(A)-(B) and (b); separate penalties	An agency's personnel records and content of such records.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.247(a)(4) and (b)(4); separate penalties	Providing unlicensed employees and volunteers with written information about the employee misconduct registry.
§97.247(c)	Documentation of compliance with verifying the employability and use of unlicensed applicants, employees, and volunteers.
§97.248(b), (b)(1), and (b)(3); separate penalties	The use of volunteers in an agency.
§97.249(b)	Adoption of a written policy for the reporting of alleged acts of abuse, neglect, and exploitation of clients.
§97.250(a)	Adoption of a written policy covering procedures for investigating known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.250(e)	Prohibiting an agency from retaliating against a person for filing a complaint, presenting a grievance, or providing, in good faith, information about the services provided by the agency.
§97.251	Adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.253	Adoption of a written policy describing whether an agency will conduct drug testing of employees that describes the method and provides a copy of the policy.
§97.254	Adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims.
§97.255(a)	Adoption of a written policy to ensure compliance with the Texas Occupations Code, Chapter 102, relating to Solicitation of Patients.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4); separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5); separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4); separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2); separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4); separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k); separate penalties	Annual review and update of a written emergency preparedness and response plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.
§97.256(o)(1)-(2) and (p); separate penalties	Notice of temporary changes due to an emergency or disaster.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.259(g)	Prohibiting use of the presurvey conference to meet initial training requirements for a first-time administrator and alternate administrator.
§97.260(d)	Prohibiting use of the pre-survey conference to meeting continuing education requirements for an administrator and alternate administrator.
§97.281(1)-(16); separate penalties	Adoption of a written policy that specifies the agency's client care practices.
§97.282(a)-(b), (d)-(f)(1)-(8), and (g)-(h); separate penalties	Adoption of a written policy governing client conduct and responsibility and client rights.
§97.284	Adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988).
§97.285	Adoption of written policies addressing infection control.
§97.285(1)(A)-(C) and (2); separate penalties	Adoption and compliance with a written policy that addresses infection control.
§97.286(a)	Adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable.
§97.288(a)	Adoption of a written policy on coordination of services.
§97.288(b)	Documentation of coordination of services.
§97.289(c)(2)	Providing written information about the employee misconduct registry to an unlicensed person providing services under arrangement.
§97.289(e)(1)-(3); separate penalties	Documentation of personnel qualifications and for unlicensed staff that provide services under arrangement.
§97.290(a)	Adoption of a written policy for ensuring that backup services are available when an agency employee or contractor is not available to deliver the services.
§97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
§97.290(a)(3)	Not coercing a client to accept backup services.
§97.290(b)	Adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours.
§97.291	Adoption of a written policy for an agency's written contingency plan.
§97.292(a)	Providing a client or a client's family with a written agreement for services and ensuring appropriate content of the agreement.
§97.292(b)	Obtaining acknowledgment that the client received an appropriate written agreement for services and ensuring that the acknowledgment is in the client's record.
§97.293	Maintaining a current list of clients for each category of service licensed.
§97.294	Adoption of a written policy for establishing a time frame for the initiation of care or services.
§97.295(c), (d), and (f); separate penalties	Delivery of written notice and documentation requirements pertaining to an agency's transfer or discharge of a client.
§97.296(a)	Adoption of a written policy that states whether physician delegation will be honored by the agency.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Adoption of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.

**SEVERITY LEVEL A VIOLATIONS****\$100 - \$250 per violation**

<b>Rule Cite</b>	<b>Subject Matter</b>
§97.297(2)	Physician orders received by facsimile.
§97.298	Adoption of a written policy for ensuring compliance with rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.299	Adoption of a written policy for ensuring compliance with rules of the Texas Board of Nursing adopted at 22 TAC Chapters 211-226 (relating to Nursing Continuing Education, Licensure, and Practice in the State of Texas).
§97.300(b)	Adoption of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(2)(A)-(B); separate penalties	The administration of medication.
§97.301(a)(1)-(9)(A)-(P); separate penalties	Requirements for maintaining an agency's client records.
§97.301(b)(1)-(3); separate penalties	Adoption and enforcement of a written policy for retention of records.
§97.302	Adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse.
§97.321(a)	Branch office compliance with the regulations of its parent agency.
§97.321(c)(1)	Providing services only within a branch office licensed service area.
§97.321(c)(3)	Providing a written notification of an expansion of a branch office service area.
§97.321(c)(4)	Providing written notification of a reduction of a branch office licensed service area.
§97.321(d)(1)-(3); separate penalties	Requirements for branch offices.
§97.321(f)	Requirement prohibiting branch offices from providing services not offered by the parent agency.
§97.322(a) and (c)(1)-(2); separate penalties	Standards for hospice alternate delivery sites.
§97.401(f)	The use of home health aides.
§97.402(b)	Requirement for implementing a home health aide training and competency program.
§97.404(e)	Requirement that an agency develops operational policies that are considerate of the principles of individual and family choice and control, functional need, and accessible and flexible services.
§97.404(f)(1)-(3); separate penalties	Additional requirements for maintaining client records in an agency that provides personal assistance services.
§97.404(g)	Adoption of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2); separate penalties	Conditions and qualifications for supervision of agency personnel delivering personal assistance services.
§97.405(d)	Requirement for individual personnel files on all physicians.



<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.405(g)	A written transfer agreement with a local hospital for an agency that provides home dialysis services.
§97.405(h)	An agreement with a licensed end stage renal disease facility to provide backup outpatient dialysis services.
§97.405(j)	Ensuring that names of clients awaiting a donor transplant are entered in the recipient registry program.
§97.405(s)(1) and (4)-(7); separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(v)	Development of a written preventive maintenance program for home dialysis equipment.
§97.405(v)(1)(B)	Maintaining written evidence of preventive maintenance and equipment repairs.
§97.405(z)	Adoption of policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(1)	Adoption of a written policy for the provision of psychoactive treatments, if applicable.
§97.523(a)	Staff availability for the initial survey.
§97.523(b)	Staff availability for survey other than the initial survey.
§97.523(e)	Providing surveyor entry to the agency during regular business hours and within two hours of the surveyor's arrival at the agency.
§97.525(c)	Having documentation of accreditation available at the time of a survey.
§97.527(b)	Providing surveyor with audio recording of the exit conference if made by the agency.
§97.527(c)	Providing surveyor with video recording of the exit conference if made by the agency.
§97.527(g)(1)-(2)(A)-(D)	Submitting an acceptable plan of correction and correcting a violation within the required time frame.
§97.801(a)	Adoption of written policies relating to the standards for providing hospice services.
§97.801(e)	Restriction on use of the word "hospice" if not licensed to provide hospice services.
§97.811(c)(1)-(8); separate penalties	Factors to consider in the hospice comprehensive assessment.
§97.812(a) and (b)(1)-(3); separate penalties	Requirements for updating the hospice comprehensive assessment.
§97.813(a) and (b)(1)-(5); separate penalties	Including data elements in the hospice comprehensive assessment to measure outcomes.
§97.820(d)	Designating an interdisciplinary team responsible for establishing the policies governing the provision of hospice services.
§97.821(d)(1)-(5); separate penalties	The content of a hospice plan of care.
§97.821(d)(6)	Documenting client understanding, involvement, and agreement with the hospice plan of care.
§97.844(b) and (c); separate penalties	Requirements for hospice homemaker services.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.845(a) and (b)(1)-(2); separate penalties	Using a qualified hospice homemaker to provide hospice homemaker services.
§97.846(a) and (b); separate penalties	A hospice agency's use of and coordination with services provided under a state Medicaid personal care benefit.
§97.850(a)(1) and (2); separate penalties	Organization and administration of hospice services.
§97.851(b)(1) and (2); separate penalties	Hospice services provided by a licensed person.
§97.853(d)	Hospice providing infection control education.
§97.854(a) and (b)(1)-(3); separate penalties	Hospice professional management responsibility for contracted services.
§97.855(a) and (b); separate penalties	Additional hospice requirements for criminal background checks.
§97.856(d)	Including a hospice alternate delivery site in the written and actual organizational structure of the parent agency.
§97.857(1)-(2) and (4)-(5); separate penalties	Hospice staff training.
§97.858(a)-(c); separate penalties	Hospice medical director.
§97.859(a)-(g); separate penalties	Hospice discharge or transfer of care.
§97.860(f), (g)(1)-(2), (j), (k)(1)-(5), (l)(1) and (3), and (m); separate penalties	Provision of drugs and biologicals by a hospice.
§97.861(e)(1)-(8); separate penalties	Written contract for providing hospice short-term inpatient care.
§97.871(a)(2)(A)-(G), (d)(1)-(4), (e)(1)-(5), (f), (g)(1), (l)(16), (m)(4), and (n)(4); separate penalties	Physical environment in a hospice inpatient unit.
§97.880(b)(1)-(10), (c)(2), and (e); separate penalties	Providing hospice care to residents of a skilled nursing facility, nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions.

Figure: 40 TAC §97.602(h)(3)(E)

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.11(d)	Requirement to have a separate license for each place of business.
§97.23	A license may not be sold or assigned to another person.
§97.220(b)	Maintaining adequate staff to provide services and supervise the provision of services.
§97.220(k)(1)-(3)	Information an agency must provide to a client if leaving the agency's service area.
§97.241(a), (c), and (d); separate penalties	Management responsibilities.
§97.243(a)(1)	Designating a qualified agency administrator.
§97.243(a)(2)	Designating a qualified agency alternate administrator.
§97.243(b)(1)(A)-(I) and (2)-(3); separate penalties	Responsibilities of an agency administrator.
§97.243(c)(1)	Requirement to directly employ or contract with a qualified individual to serve as the supervising nurse.
§97.243(c)(2)	Requirement to designate a qualified alternate supervising nurse.
§97.243(c)(2)(A)(i)-(iv); separate penalties	Supervisory responsibilities of the supervising nurse or alternate supervising nurse.
§97.243(c)(2)(B)	Allowing the supervising nurse to be the administrator if the supervising nurse meets the qualifications of the administrator.
§97.243(c)(3)	Requirements for the supervision of physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling.
§97.243(d)	Enforcing a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide licensed home health services, licensed and certified home health services or hospice services.
§97.244(a)(2)	Additional qualifications for the agency administrator and alternate administrator for agencies licensed to provide hospice services.
§97.244(a)(3)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide only personal assistance services.
§97.244(b)(1)-(5); separate penalties	Conditions of the agency administrator and alternate administrator.
§97.244(c)(1)	Qualifications of the supervising nurse and alternate supervising nurse for agencies without the home dialysis designation.
§97.244(c)(2)	Qualifications of the supervising nurse and alternate supervising nurse for agencies with the home dialysis designation.
§97.245(a)-(b)(1)-(10); separate penalties	Enforcement of staffing policies that govern all personnel used by the agency.
§97.247(a)(1)-(3) and (5)(A)-(B)-(6)(A)-(B) and (b)(1)-(3) and (5)(A)-(B)-(6)(A)-(B); separate penalties	Verifying the employability and use of unlicensed applicants, employees and volunteers.
§97.248(b), (b)(1), and (b)(3); separate penalties	The use of volunteers in an agency.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.249(c)	Reporting alleged acts of abuse, neglect, and exploitation of clients.
§97.250(b)(1)-(3), (c)(1)-(2), and (d)-(e); separate penalties	Enforcement of an agency's written policy for investigation of known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.251	Compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(1)-(2)	An agency's financial ability to carry out its functions.
§97.256(a)	Having a written emergency preparedness and response plan based on a risk assessment.
§97.256(b)(1)-(4); separate penalties	Agency personnel responsible for developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(c)(1)-(5); separate penalties	Contents of a written emergency preparedness and response plan.
§97.256(d)(1)-(4); separate penalties	Response and recovery phases of a written emergency preparedness and response plan.
§97.256(e)(1)-(2); separate penalties	Procedures to triage clients in a written emergency preparedness and response plan.
§97.256(f)	Procedures in a written emergency preparedness and response plan to identify a client who may need evacuation assistance.
§97.256(g)	Assisting a client as requested to register with 2-1-1 for evacuation assistance.
§97.256(h)(1)-(4); separate penalties	Counseling each client about emergency preparedness.
§97.256(i)	Training agency personnel in their responsibilities in a written emergency preparedness and response plan.
§97.256(j) and (k); separate penalties	Annual review and update of a written emergency preparedness and response plan and annual test of the response phase of the plan.
§97.256(l)	Good faith effort to comply with rules on emergency preparedness planning and implementation.
§97.256(n)	Reproducing client records damaged during a disaster.
§97.256(o)(1)-(2) and (p); separate penalties	Notice of temporary changes due to an emergency or disaster.
§97.259(b)-(e); separate penalties	Initial educational training requirements for a first-time agency administrator and alternate administrator.
§97.259(f)	Documentation requirements for initial educational training of a first-time administrator and alternate administrator.
§97.260(a)	Annual continuing education requirements for an agency administrator and alternate administrator.
§97.260(b)	Continuing education requirements for an agency administrator and alternate administrator who has not served for 180 days or more immediately preceding the date of designation.
§97.260(c)	Documentation requirements for continuing education of an administrator and alternate administrator.
§97.281(1)-(16); separate penalties	Enforcement of a written policy for client care practices.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.282(a)-(d)(1)-(8) and (g)-(h); separate penalties	Compliance with an agency policy on client conduct and responsibility and client rights.
§97.284	Compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.285	Compliance with written policies addressing infection control.
§97.285(1)(A)-(C) and (2); separate penalties	Enforcement and compliance with written policies on infection control.
§97.286(b)	Compliance with 25 TAC §§1.131-1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).
§97.287(a)(1)-(3) and (b)-(c); separate penalties	An agency's Quality Assessment and Performance Improvement Program.
§97.288(a)-(b); separate penalties	Compliance with an agency's written policy for coordination of services and documentation requirements.
§97.289(a)-(b); separate penalties	An agency's use of and agreement with independent contractors and arranged services.
§97.289(c)(1) and (3); separate penalties	Initial searches and searches at least every 12 months of the nurse aide registry and employee misconduct registry for unlicensed staff providing services under arrangement.
§97.289(d)(1)-(2); separate penalties	Conducting and reviewing a criminal history check for an unlicensed person that provides services under arrangement.
§97.290(a)	Enforcing a written policy that backup services are available when needed.
§97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
§97.290(b)	Enforcing a written policy that clients are educated in how to access care after hours.
§97.291(1)-(2); separate penalties	Implementing a written policy for an agency's written contingency plan.
§97.292(a)	Complying with the terms of a written agreement for services that the agency provided to a client or a client's family.
§97.295(a)(1)-(2); separate penalties	Providing a client with written notification, and notifying a client's attending physician if applicable, of transfer or discharge.
§97.295(b)	An agency providing written notification of a client's transfer or discharge within the required time frame.
§97.296(a)	Enforcement of an agency's policy regarding acceptance of physician delegation orders.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Enforcement of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(1)	Countersignature of physician verbal orders.
§97.298	Enforcement of a written policy for ensuring compliance with the rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.300(b)	Enforcement of a written policy for maintaining a current medication list and a current medication administration record.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.300(b)(1)-(2)(A)-(B) and (3); separate penalties	The administration of medication.
§97.303(1)-(3)(A)-(F); separate penalties	The possession and use of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(c)(2)	Maintaining adequate staff to provide and supervise services at a branch office.
§97.322(a) and (c)(1); separate penalties	Standards for hospice alternate delivery sites.
§97.401(b)(1)-(2)(A)-(B); separate penalties	Acceptance of a client for home health services and the initiation of services.
§97.401(d)	Requirement that qualified personnel provide and supervise all services.
§97.401(e)	Requirement that all staff providing services, delegation, and supervision be employed by or be under contract with the agency.
§97.401(g)	Age and competency of unlicensed persons providing licensed home health services.
§97.402(a)	Compliance with the Medicare Conditions of Participation (Social Security Act, Title 42, Code of Federal Regulations, Part 484).
§97.402(c)-(e); separate penalties	Compliance with §97.701(f) of this chapter (relating to Home Health Aides) for an agency that implements a competency evaluation program.
§97.404(c)	Qualifications of agency staff performing personal assistance services.
§97.404(d)	Tasks authorized under a personal assistance services license category.
§97.404(g)	Enforcement of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2); separate penalties	Conditions and qualifications for supervising agency personnel delivering personal assistance services.
§97.404(h)(1)-(5); separate penalties	Performance of gastrostomy tube feedings and medication administration for an agency that provides personal assistance services.
§97.405(a)	Requirements for agencies that provide peritoneal dialysis or hemodialysis services.
§97.405(c)(1)-(2); separate penalties	Qualifications and responsibilities of the medical director for an agency that provides home dialysis services.
§97.405(e)(1)(A)-(C); separate penalties	Provision and supervision of nursing services for an agency that provides home dialysis services.
§97.405(e)(2)	Provision of nutritional counseling for an agency that provides home dialysis services.
§97.405(e)(3)	Provision of medical social services for an agency that provides home dialysis services.
§97.405(f)(1)	Requirements for orientation and training of personnel providing direct care to clients receiving home dialysis services.
§97.405(f)(2)(A)-(G); separate penalties	Requirement for an orientation and skills education period for licensed nurses.
§97.405(i)	Requirement that an agency coordinate the exchange of medical and other important information when transferring a home dialysis client to a health-care facility for treatment.
§97.405(k)	Requirement for routine hepatitis testing of home dialysis clients and agency employees providing dialysis care.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.405(k)(1)(A)-(C); separate penalties	Requirements for hepatitis B screening and vaccinations for staff.
§97.405(k)(2)(A)-(E); separate penalties	Requirements for hepatitis B screening and vaccinations for clients.
§97.405(l)	Requirements for employees providing direct care to clients to have a current CPR certification.
§97.405(m)	Requirement for initial admission assessment of a client for home dialysis services.
§97.405(n)	Requirement for development of a long-term program for a client receiving home dialysis services.
§97.405(o)	Requirement that the agency conducts a history and physical of a home dialysis client at admission and annually.
§97.405(p)(1)-(2); separate penalties	Requirement for physician orders for home self-assisted dialysis treatment.
§97.405(q)(1)-(7); separate penalties	Requirements for development and implementation of a care plan for a home dialysis client.
§97.405(r)	Requirement for medication administration by licensed personnel for an agency that provides home dialysis services.
§97.405(s)(2)-(3); separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(t)(1)-(4); separate penalties	Requirements for use of water in the home dialysis setting.
§97.405(u)	Adoption and enforcement of a policy to test dialysis equipment prior to each treatment.
§97.405(v)	Enforcing the agency's written preventive maintenance program for home dialysis equipment.
§97.405(v)(1), (1)(A), (1)(C)-(D), and (2); separate penalties	Implementing requirements for a written preventive maintenance program for home dialysis equipment.
§97.405(w)(1)-(6); separate penalties	Reuse of disposable medical devices in the home dialysis setting.
§97.405(x)(1)-(2)	Provision of laboratory services.
§97.405(x)(3)-(4); separate penalties	Provision of laboratory services.
§97.405(y)(1)-(2); separate penalties	Supplies for home dialysis services.
§97.405(z)(1)-(7); separate penalties	Compliance with policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(2)-(5); separate penalties	Provision of psychoactive services.
§97.407(1)-(11); separate penalties	Provision of intravenous therapy services.
§97.523(e)	Requirement to grant the surveyor entry to the agency if closed when the surveyor arrives during regular business hours.
§97.701(a)-(f)(1)-(7); separate penalties	Home health aides.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.801(a)	Adoption or enforcement of written policies relating to the standards for providing hospice services.
§97.801(d)	Compliance with the Medicare Conditions of Participation in 42, CFR, Part 418, Hospice care.
§97.810(a) and (b); separate penalties	Time requirements for completing a hospice initial assessment and using it to initiate hospice services.
§97.811(a)(1)-(4), (b), and (c)(1)-(8); separate penalties	Requirements for the hospice comprehensive assessment.
§97.812(a) and (b)(1)-(3); separate penalties	Requirements for updating the hospice comprehensive assessment.
§97.813(a) and (b)(1)-(5); separate penalties	Including data elements in the hospice comprehensive assessment to measure outcomes.
§97.820(a)	Approach to service delivery by the hospice interdisciplinary team.
§97.820(a), (b)(1)-(4), (c) and (d); separate penalties	Requirements for a hospice interdisciplinary team.
§97.821(a)-(d)(1)-(6) and (e); separate penalties	Requirements for a hospice plan of care for a client.
§97.822(a) and (b); separate penalties	Review and revision of a hospice plan of care.
§97.823(1)	Interdisciplinary team responsibilities for coordinating hospice services.
§97.830(a)(1)-(4) and (c); separate penalties	Requirements for the provision of hospice core services.
§97.831(a)-(d); separate penalties	Providing and supervising hospice physician services.
§97.832(a) and (b); separate penalties	Providing hospice nursing services.
§97.833(a), (c), and (d); separate penalties	Social worker qualifications and providing hospice medical social services.
§97.834(a), (b)(1)(A)-(D), (b)(2) and (b)(3)(A)-(C); separate penalties	Requirements for hospice counseling services.
§97.840(a)(1)-(5) and (b); separate penalties	Providing hospice non-core services.
§97.841	Providing hospice therapy services.
§97.842(b)(1)-(4), (c)(1)-(6), (d)(1)-(2), and (e)(1)-(5); separate penalties	Requirements for hospice aide services.
§97.843(a)-(c)(1)-(3), (d)(1)-(6), (e)(1)-(3), and (f); separate penalties	Using a qualified hospice aide to provide hospice aide services.
§97.844(b)-(d); separate penalties	Requirements for hospice homemaker services.
§97.845(a) and (b)(1)-(2); separate penalties	Using a qualified hospice homemaker to provide hospice homemaker services.
§97.846(a) and (b); separate penalties	A hospice agency's use and coordination with services provided under a state Medicaid personal care benefit.



<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.850(a)(1)-(2), (c)(1)-(9), (d)(1)-(3), (e)(1)-(7), and (f); separate penalties	Requirements for the organization and administration of hospice services.
§97.851(a) and (b)(1)-(2); separate penalties	Hospice services provided by a licensed person.
§97.852(a) and (b)(1)-(2); separate penalties	Responsibilities of a hospice governing body and administrator.
§97.853(a)-(c)(1)-(2) and (d); separate penalties	Hospice infection control program.
§97.854(a) and (b)(1)-(3); separate penalties	Hospice professional management responsibility for contracted services.
§97.855(a) and (b); separate penalties	Additional hospice requirements for criminal background checks.
§97.856(c)-(e); separate penalties	Hospice alternate delivery sites.
§97.857(1)-(5); separate penalties	Hospice staff training.
§97.858(a)-(g); separate penalties	Hospice medical director.
§97.859(a)-(g); separate penalties	Hospice discharge or transfer of care.
§97.860(a)-(d), (e)(1)-(2), (f), (g)(1)-(2), (h)-(j), (k)(1)-(5), (l)(1)-(3), (m), (n)(1)-(2), and (o)-(q); separate penalties	Provision of drugs, biologicals, medical supplies, and durable medical equipment by a hospice.
§97.861(a)-(d) and (e)(1)-(8); separate penalties	Hospice short-term inpatient care.
§97.870(a) and (b)(1)-(3); separate penalties	Staffing in a hospice inpatient unit.
§97.871(a)(1)-(2)(A)-(G), (b)(1)-(4), (c)(1) and (4)(A)-(D), (d)(1)-(4), (e)(1)-(5), (f), (g)(1)-(2), (h)-(k)(1)-(3), (l)(1)-(16), (m)(1)-(4), (n)(1)(A)-(C) and (2)-(4); separate penalties	Physical environment in a hospice inpatient unit.
§97.880(a), (b)(1)-(10), (c)(1)-(3), (d)(1)-(3), and (e); separate penalties	Providing hospice services to residents of a skilled nursing facility, nursing facility, or an intermediate care facility for individuals with an intellectual disability or related conditions.

*Kaitlyn Garcia*  
*3rd Grade*



# 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 Assistive and Rehabilitative Services

Notice of Public Hearings and Opportunity for Public Comment on Revisions to 40 TAC Chapter 108, Subchapter N

The Texas Department of Assistive and Rehabilitative Services (DARS) is providing an opportunity for public comment and a notice of public hearings on the proposed revisions to 40 TAC Chapter 108, Division for Early Childhood Intervention Services, Subchapter N, Family Cost Share System. DARS proposes these revisions in order to modify the formula used to calculate the monthly family cost share amount paid for Early Childhood Intervention Services.

The public hearings listed below will be held from 4:00 p.m. until 7:00 p.m.

### July 17, 2013 - Dallas, Texas

American Foundation for the Blind

11030 Ables Lane

Dallas, Texas 75229

### July 18, 2013 - Houston, Texas

Houston Department of Health & Human Services - WIC Program

8000 North Stadium Drive

Houston, Texas 77054

Copies of the proposed rules may be obtained at <http://www.dars.state.tx.us/> or by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754. The proposed rules will be published in the *Texas Register* on or near June 28, 2013.

Written comments on the proposed rule revisions may be submitted electronically to [DARSrules@dars.state.tx.us](mailto:DARSrules@dars.state.tx.us) or sent by postal mail to:

Texas Department of Assistive and Rehabilitative Services

Center for Policy and External Relations, Mail Code 1411

4800 North Lamar Boulevard

Austin, Texas 78751-2399

### All comments must be received by 5:00 p.m. on August 1, 2013.

Persons who have communication or other accommodation needs who are planning to attend a public hearing should contact the DARS Inquiries Line at 1-800-628-5115. Requests for accommodations should be made five business days before the date of the hearing.

Please distribute this information to all interested ECI Stakeholders.

TRD-201302435

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: June 12, 2013



## Office of the Attorney General

Texas Water Code and Texas Health and Safety 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 Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Shawn Fuller; d/b/a Fuller Mobile Home Park*; Cause No. D-1-GV-08-002109; in the 200th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant owns and operates a public water system at or near 5208 Acuff Road, Lubbock, Texas. The State initiated this suit to enforce the hygiene standards for public drinking water systems established under the Texas Water Code, the Texas Health and Safety Code, and Texas Commission on Environmental Quality (TCEQ) rules promulgated thereunder. The parties propose an Agreed Final Judgment and Permanent Injunction, which assesses civil penalties against the Defendant for his violations of TCEQ rules and enjoins the Defendant against further violations. The Defendant agrees to this judgment.

Proposed Agreed Final Judgment and Permanent Injunction: The parties propose an Agreed Final Judgment and Permanent Injunction that assesses civil penalties against the Defendant in the amount of \$67,598.11, and orders the Defendant to pay the outstanding public health service fees of \$2,401.89. The Agreed Final Judgment and Permanent Injunction also includes an award of the State's reasonable attorneys fees incurred in prosecuting this case in the amount of \$30,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Heather D. Hunziker, Assistant Attorney General, 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.

TRD-201302412

Katherine Cary

General Counsel

Office of the Attorney General

Filed: June 12, 2013



## 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 06/10/13 - 06/16/13 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/10/13 - 06/16/13 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/13 - 07/31/13 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/13 - 07/31/13 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201302418

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 12, 2013

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 22, 2013. 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 July 22, 2013. 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: ABSK ENTERPRISES, INCORPORATED dba Andys Ice House; DOCKET NUMBER: 2013-0083-PST-E; IDENTIFIER: RN102229754; LOCATION: San Antonio, Bexar County;

TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 tanks (USTs) 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 pressurized piping associated with the UST system; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ASHNOOR, L.L.C. dba Kempwood Food Mart; DOCKET NUMBER: 2013-0121-PST-E; IDENTIFIER: RN101761609; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 tanks (USTs) 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 USTs; PENALTY: \$4,258; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: ATASCOSA RURAL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0183-PWS-E; IDENTIFIER: RN101439024; LOCATION: Atascosa, Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; and 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: \$840; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2012-1773-IWD-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004135000, Permit Conditions Number 2.d, by failing to prevent the unauthorized discharge of wastewater; PENALTY: \$14,250; Supplemental Environmental Project offset amount of \$7,125 applied to Big Thicket Association - Wetland Species and Ecosystems Analysis; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Brazoria County; DOCKET NUMBER: 2013-0406-PWS-E; IDENTIFIER: RN102977154; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(1)(A) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) for fecal coliform and *Escherichia coli*; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the MCL for total coliform; PENALTY: \$495; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: BRAZOS VALLEY SEPTIC & WATER, INCORPORATED; DOCKET NUMBER: 2013-0329-PWS-E; IDENTIFIER: RN102684149; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC

§290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Chameleon Industries, Incorporated; DOCKET NUMBER: 2013-0027-AIR-E; IDENTIFIER: RN102176815; LOCATION: Odessa, Ector County; TYPE OF FACILITY: aluminum sulfate production; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 28954, Special Conditions (SC) Number 9.C, by failing to maintain a three-foot containment wall around the tank area; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 28954, SC Number 12, by failing to maintain records of testing and sampling; PENALTY: \$15,125; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: CHANNELVIEW ENTERPRISES, INCORPORATED dba Key Truck Stop; DOCKET NUMBER: 2013-0132-PST-E; IDENTIFIER: RN101249498; LOCATION: Channelview, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$18,000; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2013-0312-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §106.6(b) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1235, Special Terms and Conditions Number 22, and Permit by Rule Registration Number 79446, by failing to prevent unauthorized emissions during an emissions event; PENALTY: \$30,000; Supplemental Environmental Project offset amount of \$12,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: City of Newton; DOCKET NUMBER: 2013-0123-SLG-E; IDENTIFIER: RN103154647; LOCATION: Newton, Newton County; TYPE OF FACILITY: sludge transportation operation/business; RULE VIOLATED: 30 TAC §312.142(a), by failing to renew a sludge transporter registration before continuing to transport wastewater treatment sludge; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: City of Wheeler; DOCKET NUMBER: 2013-0184-PWS-E; IDENTIFIER: RN102698313; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$9,775; ENFORCEMENT COORDINATOR: Katy Schumann, (512)

239-2602; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: Ellwood Texas Forge Navasota, LLC; DOCKET NUMBER: 2012-2607-IWD-E; IDENTIFIER: RN102343563; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004073000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: \$8,800; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: EMPIRE DISPOSAL, LTD.; DOCKET NUMBER: 2012-1806-MLM-E; IDENTIFIER: RN105246409; LOCATION: Kennedale, Tarrant County; TYPE OF FACILITY: refuse disposal facility with a wood waste processor and a permanent air curtain incinerator (ACI); RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain proper authorization prior to operation of an ACI; 30 TAC §§122.143(4) and (15), 122.146(1), and 122.165(b) and (c), THSC, §382.085(b), and Federal Operating Permit (FOP) Number O3227/General Operating Permit (GOP) Number 518, Terms and Conditions (b)(2) and (3)(D)(i), by failing to certify compliance for at least each 12-month period following initial permit issuance and by failing to include a signed certification of accuracy and completeness by a responsible official; 30 TAC §§122.143(4) and (15), 122.145(2)(A) and (C), and 122.165(b) and (c), THSC, §382.085(b), and FOP Number O3227/GOP Number 518, Terms and Conditions (b)(2) and (3)(C)(ii)(a) and (c), by failing to submit a complete and accurate semi-annual deviation report within 30 days after the end of the reporting period; 30 TAC §§335.62, 335.503, and 335.513 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$51,050; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Farmersville Texaco, Incorporated; DOCKET NUMBER: 2012-2349-PST-E; IDENTIFIER: RN102224474; LOCATION: Farmersville, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$8,063; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: GOLD LAND INVESTORS, LLC dba Brentwood Food Mart; DOCKET NUMBER: 2012-2712-PST-E; IDENTIFIER: RN102035367; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 pressurized piping associated with the UST sys-

tem; PENALTY: \$4,629; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Gricelda Samano dba La Estrella Mini Market; DOCKET NUMBER: 2012-2428-PST-E; IDENTIFIER: RN102246469; LOCATION: Denton, Denton 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 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 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: HADEEL CORPORATION dba H & H Food Mart Shell; DOCKET NUMBER: 2013-0053-PST-E; IDENTIFIER: RN102371085; LOCATION: Fort Worth, 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 the underground storage tanks (USTs) for releases at a frequency of once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available upon request by agency personnel; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Houston Nursery LLC; DOCKET NUMBER: 2013-0427-PWS-E; IDENTIFIER: RN101648806; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2011 and 2012 monitoring periods; and 30 TAC §290.107(e), by failing to provide the results of triennial sampling for synthetic organic chemical contaminants to the executive director for the January 1, 2009 - December 31, 2011 monitoring period; PENALTY: \$150; ENFORCEMENT COORDINATOR: Michael Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Luis F. Garza dba L F Garza Exxon Service station; DOCKET NUMBER: 2012-2616-PST-E; IDENTIFIER: RN102026614; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 tanks (USTs) 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 pressurized piping associated with the UST system; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: Lyons Water Supply Corporation; DOCKET NUMBER: 2013-0330-PWS-E; IDENTIFIER: RN101459055; LOCATION: Lyons, Burleson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level of 0.80 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: MacBee Special Utility District; DOCKET NUMBER: 2013-0426-PWS-E; IDENTIFIER: RN101204410; LOCATION: Wills Point, Van Zandt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for total haloacetic acids on a running annual average; PENALTY: \$357; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: MITESH C-STORE, INCORPORATED dba Lake Country Food Mart; DOCKET NUMBER: 2013-0007-PST-E; IDENTIFIER: RN103002556; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 tanks (USTs) 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 pressurized piping associated with the UST system; PENALTY: \$3,882; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: NAVARRO HOSPITAL, L.P. dba Navarro Regional Hospital; DOCKET NUMBER: 2013-0283-PST-E; IDENTIFIER: RN102364874; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: hospital with an emergency generator system; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank; PENALTY: \$2,953; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2012-2706-IWD-E; IDENTIFIER: RN102184041; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003017000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(1) and (11)(A) and 319.4 and 319.5(b) and TPDES Permit Number WQ0003017000, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze monthly and single grab samples at the minimum frequency specified in the permit; PENALTY: \$63,987; Supplemental Environmental Project offset amount of \$31,993 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: Prism Gas Systems I, L.P.; DOCKET NUMBER: 2013-0250-AIR-E; IDENTIFIER: RN102558939; LOCATION: Waskom, Harrison County; TYPE OF FACILITY: gas processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O815/General Operating Permit (GOP) Number 514, Site Wide Requirements (SWR) (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O815/GOP Number 514, SWR (b)(2), and THSC, §382.085(b), by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period; PENALTY: \$17,325; ENFORCEMENT COORDINATOR: Nadia Hameed, (713)

767-3629; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Shawn Mark Yarbrough dba Walnut Ridge Estates Water System; DOCKET NUMBER: 2012-2672-PWS-E; IDENTIFIER: RN101195857; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; 30 TAC §290.113(e), by failing to timely submit the results of quarterly sampling for Stage 1 disinfectant byproduct (DBP) contaminant levels to the executive director; and 30 TAC §290.113(e), by failing to provide the results of quarterly sampling for Stage 1 DBP contaminant levels to the executive director; PENALTY: \$620; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: SHREE PRAMUKH BAPA, CORPORATION dba A. J. Food Mart; DOCKET NUMBER: 2013-0285-PST-E; IDENTIFIER: RN102784915; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 tanks (USTs) 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 pressurized piping associated with the UST system; PENALTY: \$3,879; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: SRIPATI, INCORPORATED dba Starkeys 1; DOCKET NUMBER: 2013-0244-PST-E; IDENTIFIER: RN101726693; LOCATION: Avinger, Upshur 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 the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(29) COMPANY: Strike, LLC; DOCKET NUMBER: 2013-0163-AIR-E; IDENTIFIER: RN106574932; LOCATION: Laredo, Webb County; TYPE OF FACILITY: dry abrasive cleaning and coating site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating an outdoor dry abrasive cleaning and non-enclosed surface coating site; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(30) COMPANY: Sunrise Valley Properties, Incorporated dba Eastland Food Mart; DOCKET NUMBER: 2013-0074-PST-E; IDENTIFIER: RN102408846; LOCATION: Eastland, Eastland 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 the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(31) COMPANY: Superior Energy Services, L.L.C.; DOCKET NUMBER: 2013-0436-AIR-E; IDENTIFIER: RN106457245; LOCATION:

Yancey, Medina County; TYPE OF FACILITY: bulk mineral handling site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0202-PWS-E; IDENTIFIER: RN102687381; LOCATION: Latexo, Houston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and §290.111(b)(2)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids (HAA5), based on the running annual average and by failing to provide public notification of the failure to comply with the MCL for HAA5; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for total trihalomethanes, based on the running annual average PENALTY: \$2,982; ENFORCEMENT COORDINATOR: Katy Montgomery, (512) 239-2602; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: University Behavioral Health of El Paso, LLC; DOCKET NUMBER: 2013-0417-PST-E; IDENTIFIER: RN101654333; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: emergency generator and one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the 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 pressurized piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$9,544; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(34) COMPANY: Vidal Lopez and AJ's Logistic Services, LLC; DOCKET NUMBER: 2012-1882-MLM-E; IDENTIFIER: RN104709241; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: sludge transporter business and beneficial land use site; RULE VIOLATED: 30 TAC §312.4(d), by failing to obtain authorization to land apply domestic sewage sludge; 30 TAC §312.143 and TWC, §26.121(a)(1), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the facility has written authorization by permit or registration issued by the executive director to receive wastes; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §312.142(c), by failing to maintain a copy of the sludge transporter registration authorization at the designated place of business and in each vehicle operated under that registration; 30 TAC §312.144(e), by failing to keep records showing how the domestic septage met the pathogen and vector attraction reduction requirements listed in 30 TAC §312.82(c) (relating to Pathogen Reduction) and 30 TAC §312.83 (relating to Vector Attraction Reduction); 30 TAC §312.145(a), by failing to maintain a record of each individual collection and de-

posit in the form of a trip ticket; 30 TAC §312.144(f), by failing to mark discharge valves and ports on vehicles used to transport liquid wastes; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to perform cleanup actions upon detection of a release of used oil; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label used oil containers clearly with the words Used Oil; PENALTY: \$18,900; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(35) COMPANY: Vopak Terminal Deer Park, Incorporated; DOCKET NUMBER: 2013-0344-IWD-E; IDENTIFIER: RN100225093; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: bulk liquid storage transshipment terminal with an associated wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002383000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports (DMRs) for the monitoring periods ending February 29, 2012 for Outfall Numbers 001 and 002; April 30, 2012 for Outfall Numbers 001 and 003; May 31, 2012 for Outfall Numbers 001, 002, and 003; June 30, 2012 for Outfall Numbers 001 and 002; July 31, 2012 for Outfall Number 001; and September 30, 2012 for Outfall Numbers 001, 002, and 003, by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0002383000, Monitoring and Reporting Requirements Number 1, by failing to submit complete DMRs for the monitoring periods ending January 31, 2012 for Outfall Number 001; March 31, 2012 for Outfall Numbers 001, 002, and 003; and April 30, 2012 for Outfall Number 002, by the 20th day of the following month; PENALTY: \$8,640; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: WEST TEXAS BOYS RANCH; DOCKET NUMBER: 2013-0424-MWD-E; IDENTIFIER: RN101526499; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.350(d) and TCEQ Permit Number WQ0013140001, Operational Requirements Number 9 and Special Provisions Number 2, by failing to employ or contract one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(37) COMPANY: WESTMOUNT, INCORPORATED dba Fairway Food Store; DOCKET NUMBER: 2013-0100-PST-E; IDENTIFIER: RN100928563; LOCATION: Houston, Harris 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 the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,825; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: ZGHOUL LLC dba Shop Rite; DOCKET NUMBER: 2013-0301-PST-E; IDENTIFIER: RN101754307; LOCATION: Schertz, Guadalupe 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 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 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and

making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(39) COMPANY: Zishan Ali dba Branch Grocery; DOCKET NUMBER: 2012-2309-PST-E; IDENTIFIER: RN102395951; LOCATION: Princeton, Collin 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 the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201302386

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 11, 2013



### Enforcement Orders

An agreed order was entered regarding Energy Pumping Specialties, Inc., Docket No. 2012-1721-MLM-E on May 23, 2013 assessing \$6,575 in administrative penalties with \$1,315 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amy Becker and Jodie Taylor dba Martins Mill Water Supply Corporation, Docket No. 2012-1743-MLM-E on May 23, 2013 assessing \$2,896 in administrative penalties with \$579 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AL-QAMAR, INC. dba Zam Zam Water Supply, Docket No. 2012-1784-PWS-E on May 23, 2013 assessing \$1,598 in administrative penalties with \$318 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jesus Lopez, Docket No. 2012-2173-MLM-E on May 23, 2013 assessing \$713 in administrative penalties with \$142 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Eanes and Shelley Eanes dba Midway Grocery, Docket No. 2012-2228-PST-E on May 23, 2013 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Bongshi Corporation dba Sunrise Super Stop 15, Docket No. 2012-2276-PST-E on May 23, 2013 assessing \$2,876 in administrative penalties with \$575 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PINE MEADOW MHC, LLC, Docket No. 2012-2289-PWS-E on May 23, 2013 assessing \$1,550 in administrative penalties with \$310 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TARK-CEP LLC dba Millers Cove Grocery, Docket No. 2012-2322-PST-E on May 23, 2013 assessing \$4,631 in administrative penalties with \$926 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zeway Corp. dba Zack Shell & Deli, Docket No. 2012-2327-PST-E on May 23, 2013 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZIO INVESTMENTS, LLC dba LCM Mart and Zahid Raza dba LCM Mart, Docket No. 2012-2348-PST-E on May 23, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALISHAH SHAIKH INC dba New Way Grocery, Docket No. 2012-2390-PST-E on May 23, 2013 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zahid Khan dba Hilltop Grocery, Docket No. 2012-2402-PST-E on May 23, 2013 assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KCMJ Enterprises, Inc. dba Exxon HP 67, Docket No. 2012-2446-PST-E on May 23, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mario Aldalu dba Expresso Food Store, Docket No. 2012-2461-PST-E on May 23, 2013 assessing \$4,600 in administrative penalties with \$920 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sambidhan Lacoul dba Ritz Food Mart Texaco, Docket No. 2012-2469-PST-E on May 23, 2013 assessing \$2,943 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ilyas Shakoor dba Hiras Wil Max, Docket No. 2012-2475-PST-E on May 23, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Connel Oil Corp. dba Mr. C Food Store 4, Docket No. 2012-2477-PST-E on May 23, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dickens, Docket No. 2012-2507-MWD-E on May 23, 2013 assessing \$1,312 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burkland, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALKA CORPORATION dba Circle P Food Store, Docket No. 2012-2529-PST-E on May 23, 2013 assessing \$3,893 in administrative penalties with \$778 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Houston, L.P., Docket No. 2012-2548-IWD-E on May 23, 2013 assessing \$1,175 in administrative penalties with \$235 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKE WINONA PROPERTY OWNERS ASSOCIATION, Docket No. 2012-2549-PWS-E on May 23, 2013 assessing \$1,557 in administrative penalties with \$311 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAIRMAN, LLC dba Stuckey's Pecan Shoppe 109, Docket No. 2012-2579-PST-E on May 23, 2013 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grace G. Kim dba J&C Stop & Serve, Docket No. 2012-2597-PST-E on May 23, 2013 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DENNIS PORTER, INC. dba Porter's Shell, Docket No. 2012-2602-PST-E on May 23, 2013 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Channelview Independent School District, Docket No. 2012-2610-PST-E on May 23, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texpac Group Inc dba Andy Mart, Docket No. 2012-2640-PST-E on May 23, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PITTSBURG CORNER EXPRESS LLC, Docket No. 2012-2647-PST-E on May 23, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2012-2663-PST-E on May 23, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OST FOOD MART, INC. dba OST Food Store, Docket No. 2012-2664-PST-E on May 23, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANMOL ENTERPRISES INC dba Tarkington Exxon, Docket No. 2012-2680-PST-E on May 23, 2013 assessing \$3,563 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON U.S.A. INC., Docket No. 2012-2684-PST-E on May 23, 2013 assessing \$5,767 in administrative penalties with \$1,153 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Big Oaks Municipal Utility District, Docket No. 2012-2693-MWD-E on May 23, 2013 assessing \$2,025 in administrative penalties with \$405 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INDO-AMERICAN ENTERPRISE, INC. dba Bingo Truck Stop, Docket No. 2012-2709-PST-E on May 23, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tuan Ngoc Do dba Xpress Mart, Docket No. 2012-2710-PST-E on May 23, 2013 assessing \$2,888 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Intertek USA Inc. dba Intertek Automotive Research, Docket No. 2012-2731-PST-E on May 23, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Army Corps of Engineers, Docket No. 2013-0011-MWD-E on May 23, 2013 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAYS CITY CORPORATION dba San Antonio Bulk Plant, Docket No. 2013-0013-PST-E on May 23, 2013 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Idalou, Docket No. 2013-0019-PWS-E on May 23, 2013 assessing \$330 in administrative penalties with \$66 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgeport Country Club, Inc., Docket No. 2013-0044-WR-E on May 23, 2013 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Panhandle, Docket No. 2013-0048-PWS-E on May 23, 2013 assessing \$960 in administrative penalties with \$192 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Missouri City, Docket No. 2013-0050-PST-E on May 23, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tx Xpress LLC dba Texas Express, Docket No. 2013-0062-PST-E on May 23, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas State Aquarium Association, Docket No. 2013-0076-PST-E on May 23, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HIGH POINT WATER SUPPLY CORPORATION, Docket No. 2013-0109-PWS-E on May 23, 2013 assessing \$338 in administrative penalties with \$67 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Winkle Oil Company, Inc., Docket No. 2013-0168-PST-E on May 23, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512)

239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cleveland, Docket No. 2013-0173-MWD-E on May 23, 2013 assessing \$1,375 in administrative penalties with \$275 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Daingerfield, Docket No. 2013-0194-MWD-E on May 23, 2013 assessing \$3,350 in administrative penalties with \$670 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding EKTA FOOD, INC. dba Step In, Docket No. 2013-0318-PST-E on May 23, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding MCCREERY AVIATION CO., INC. dba McCreery Aviation, Docket No. 2013-0319-PST-E on May 23, 2013 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Robert Huynh dba Sunmart 442, Docket No. 2013-0320-PST-E on May 23, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ricky Shipp et al dba Holly Mart Chevron, Docket No. 2013-0340-PST-E on May 23, 2013 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding GJ & H Investment Company Inc, Docket No. 2013-0341-PST-E on May 23, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of West University Place, Docket No. 2013-0351-PST-E on May 23, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-

2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding UNLIMITED VALUE, INC. dba Crosby Conoco, Docket No. 2013-0352-PST-E on May 23, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding COOK CHILDREN'S MEDICAL CENTER, Docket No. 2013-0377-PST E on May 23, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding TA OPERATING LLC dba Petro Stopping Center 301, Docket No. 2013-0381-PST-E on May 23, 2013 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Bayway Homes Incorporated, Docket No. 2013-0425-WQ-E on May 23, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jarrod L Meyer, Docket No. 2013-0483-WOC-E on May 23, 2013 assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Penny Cable dba Hilltop Tire Service, Docket No. 2011-1053-MSW-E on June 5, 2013 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SRK GROUPS INC dba Cool Stop 1, Docket No. 2011-2313-PST-E on June 5, 2013 assessing \$17,908 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Iftkhar Ali dba Food Stop, Docket No. 2012-0007-PST-E on June 5, 2013 assessing \$12,207 in administrative penalties with \$8,607 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bishop, Docket No. 2012-0082-MWD-E on June 5, 2013 assessing \$35,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oakhollow MH Park, LLC dba Oakhollow Mobile Home Park and Gary Don Stahlheber dba Oakhollow Mobile Home Park, Docket No. 2012-0301-PWS-E on June 5, 2013 assessing \$5,867 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Caddell Stephenson, Docket No. 2012-0327-PST-E on June 6, 2013 assessing \$3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold Ridlehuber dba J & R Auto, Docket No. 2012-0555-IHW-E on June 5, 2013 assessing \$12,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brandon Menn dba B & C Tire Disposal, and Celina Menn, Docket No. 2012-0623-MLM-E on June 5, 2013 assessing \$12,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Thornton, Docket No. 2012-0705-MWD-E on June 5, 2013 assessing \$72,012 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bains Brothers, LLC dba Bains Brothers Petroleum 6, Docket No. 2012-0757-PST-E on June 5, 2013 assessing \$17,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding VA WESTFIELD PARTNERS, LLC dba Westfield Homes Addition, Docket No. 2012-0977-WQ-E on June 5, 2013 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DNR BUSINESS, INC., Docket No. 2012-1095-PST-E on June 5, 2013 assessing \$7,631 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samuel O. Klaerner dba Chaparral Water System, Docket No. 2012-1133-PWS-E on June 5, 2013 assessing \$2,068 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James B. Madison and Deana M. Perdue dba Madisons, Docket No. 2012-1189-PST-E on June 5, 2013 assessing \$15,712 in administrative penalties with \$3,142 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Esteban Prado Sanchez, Sr., Docket No. 2012-1400-LII-E on June 5, 2013 assessing \$5,384 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2012-1441-AIR-E on June 5, 2013 assessing \$100,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kendall Speight, Inc. dba Hook-N-Bull Oilfield Service, Docket No. 2012-1829-SLG-E on June 5, 2013 assessing \$20,648 in administrative penalties with \$4,129 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sabinal, Docket No. 2012-1891-MWD-E on June 5, 2013 assessing \$9,451 in administrative penalties with \$1,889 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MORGAN OIL COMPANY dba Depot Chevron, Docket No. 2012-1932-PST-E on June 5, 2013 assessing \$11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Julie Hodgson dba Wildcard Services, Docket No. 2012-2077-MSW-E on June 5, 2013 assessing \$7,750 in administrative penalties with \$1,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRODUCERS COOPERATIVE ELEVATOR dba Floydada 1 Grain Elevator, Docket No. 2012-2146-PST-E on June 5, 2013 assessing \$20,101 in administrative penalties with \$4,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MCLANE COMPANY, INC., Docket No. 2012-2213-PST-E on June 5, 2013 assessing \$13,259 in administrative penalties with \$2,651 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dome Petrochemical, L.C., Docket No. 2012-2357-AIR-E on June 5, 2013 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 529 #35, LTD., Docket No. 2012-2367-MWD-E on June 5, 2013 assessing \$8,750 in administrative penalties with \$1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2012-2382-AIR-E on June 5, 2013 assessing \$7,975 in administrative penalties with \$1,595 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2012-2393-AIR-E on June 5, 2013 assessing \$39,375 in administrative penalties with \$7,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Clifton dba Brahma Mart, Docket No. 2012-2422-PST-E on June 5, 2013 assessing \$11,383 in administrative penalties with \$2,276 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N.E. Jones Oil Company, Inc. dba 3 Way Grocery, Docket No. 2012-2458-PST-E on June 5, 2013 assessing \$8,036 in administrative penalties with \$1,607 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.M. QUICK SHOP, INC., Docket No. 2012-2531-PST-E on June 5, 2013 assessing \$8,504 in administrative penalties with \$1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARAMCO ASSOCIATED COMPANY, Docket No. 2012-2551-PST-E on June 5, 2013 assessing \$8,574 in administrative penalties with \$1,714 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAIRBANK FOOD STORE, INC. dba Bestco Food Mart, Docket No. 2012-2627-PST-E on June 5, 2013 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & ROZY INC. dba K & K Food Mart 2, Docket No. 2012-2636-PST-E on June 5, 2013 assessing \$16,350 in administrative penalties with \$3,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yoon Soo Song dba Beltway Grill Shell, Docket No. 2012-2689-PST-E on June 5, 2013 assessing \$9,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201302408

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 12, 2013



## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the 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 **July 22, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 22, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ashok K. Sharma d/b/a A-1 Mart; DOCKET NUMBER: 2011-0744-PST-E; TCEQ ID NUMBER: RN102010097; LOCATION: 6800 Camp Bowie West Boulevard, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 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: \$3,640; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: KHURSA ENTERPRISES INC d/b/a Let's Stop; DOCKET NUMBER: 2012-1115-PST-E; TCEQ ID NUMBER: RN101433308; LOCATION: 3101 West Euless Boulevard, Euless, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance; 30 TAC §334.72(3)(B), by failing to report a suspected release to the TCEQ within 24 hours of the discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; TWC, §26.3475(d) and 30

TAC §334.49(a)(2), by failing to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection is continuously provided to all metal components of the UST system; 30 TAC §334.75(b), by failing to contain and immediately clean up a spill or overflow of any petroleum substance from a UST that is less than 25 gallons; TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.i., by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(c)(1), 30 TAC §334.50(d)(1)(B)(vii), and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.i., by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1), 30 TAC §334.50(d)(1)(B)(iii)(I), and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.i., by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.45(c)(3)(A) and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.iv., by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.10(b) and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.v., by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and TWC, §26.3475(c)(2), 30 TAC §334.51(b)(2)(B)(ii), and TCEQ AO Docket Number 2010-1521-PST-E, Ordering Provision Number 2.a.vi., by failing to have a liquid-tight spill container; PENALTY: \$54,638; the Financial Assurance Section reviewed the financial documentation and determined that respondent is unable to pay all or part of the administrative penalty, \$36,295 is deferred contingent upon timely and satisfactory compliance with all terms of the AO, remaining \$18,343 shall be paid by respondent; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: KING FUELS, INC. d/b/a Stubbys 10 and KING FUELS, INC. d/b/a Sealy Chevron Food Mart; DOCKET NUMBER: 2012-2021-PST-E; TCEQ ID NUMBER: RN102267168 and RN102258639; LOCATION: 2014 United States Highway 190 West, Livingston, Polk County (Stubbys 10) and 2007 Meyer Road, Sealy, Austin County (Sealy Chevron); TYPE OF FACILITY: underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), Stubbys 10, by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), Sealy Chevron, by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,563; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: MARCHALL I20E PROPERTIES LLC; DOCKET NUMBER: 2013-0129-PST-E; TCEQ ID NUMBER: RN101770857; LOCATION: 304 Interstate 20 East, Marshall, Harrison County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing

to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness test; PENALTY: \$7,631; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: NEF Partners, Inc.; DOCKET NUMBER: 2012-0397-IHW-E; TCEQ ID NUMBER: RN105333215; LOCATION: 41095 Park 290 Drive, Building B, Waller, Waller County; TYPE OF FACILITY: biodiesel production facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to prevent two shipments of non-hazardous industrial waste from being stored, processed, or disposed of at an unauthorized facility, shipments were on January 14, 2009 and March 11, 2009, consisting of cotton seed oil from tank bottoms; 30 TAC §335.2(b), by failing to prevent two shipments of non-hazardous industrial waste from being stored, processed, or disposed of at an unauthorized facility, shipments were on May 20, 2009 and June 4-5, 2009, consisting of a methanol and water mixture; and 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous and industrial solid waste activities; PENALTY: \$5,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: S & S USA ENTERPRISES, INC. d/b/a Berry Food Store; DOCKET NUMBER: 2012-2388-PST-E; TCEQ ID NUMBER: RN100890979; LOCATION: 516 Berry Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,813; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: SAC-N-PAC STORES, INC.; DOCKET NUMBER: 2012-2055-PST-E; TCEQ ID NUMBER: RN103020996; RN102921376; RN102921574; RN102378668; RN104284963; and RN102925872; LOCATION: 1302 West Hopkins Street, San Marcos, Hays County (Facility 1); 1420 Blanco Street, San Marcos, Hays County (Facility 2); 9435 Ranch Road 12, San Marcos, Hays County (Facility 3); 510 South Guadalupe Street, San Marcos, Hays County (Facility 4); 22801 Interstate Highway 35, Kyle, Hays County (Facility 5); and 1525 Highway 71 West, Cedar Creek, Bastrop County (Facility 6); TYPE OF FACILITY: underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel at Facility 1, Facility 2, Facility 3, Facility 5, and Facility 6; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Facility 3; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs at Facility 4; PENALTY: \$32,006; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(8) COMPANY: Sugar Land Alliance Enterprises, Inc. d/b/a Mobil 451; DOCKET NUMBER: 2012-2493-PST-E; TCEQ ID NUMBER: RN101945301; LOCATION: 2221 Ella Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retails sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,875; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201302383

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 11, 2013



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 22, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 22, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Fridays Groceries Inc d/b/a Fridays General Store; DOCKET NUMBER: 2012-1313-PST-E; TCEQ ID NUMBER: RN104711163; LOCATION: 7678 East United States Highway 290, Johnson City, Blanco County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(4)(C) and (5)(A), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$13,829; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Overseas Venture LLC; DOCKET NUMBER: 2012-2487-PST-E; TCEQ ID NUMBER: RN101913606; LOCATION: 7183 United States Highway 59 North, Goodrich, Polk County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.48(a) and (e), by failing to ensure that the UST system release detection equipment was operated and maintained in good operating condition; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$41,484; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201302384

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 11, 2013



### Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compli-



ance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 22, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 22, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Addison Enterprises Inc. d/b/a Lavon Shell; DOCKET NUMBER: 2012-2060-PST-E; TCEQ ID NUMBER: RN101622355; LOCATION: 1030 Lavon Drive, Garland, Dallas County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$4,636; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alec Breiten d/b/a Fandangos Food Store Inc.; DOCKET NUMBER: 2012-2449-PST-E; TCEQ ID NUMBER: RN101680759; LOCATION: 313 South Smith Avenue, Hebronville, Jim Hogg County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; 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: \$8,880; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Sam Mathew d/b/a Sam's Chevron; DOCKET NUMBER: 2012-2143-PST-E; TCEQ ID NUMBER: RN103027256; LOCATION: 2020 Sam Houston Avenue, Huntsville, Walker County; TYPE OF FACILITY: UST system and convenience store with retail

sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; 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: \$10,827; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201302385

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 11, 2013



### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 336, Radioactive Substance Rules, §336.1310, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would set out the maximum disposal rates that a licensee may charge generators for disposal of low-level radioactive waste. The maximum disposal rate would be the same as the executive director's recommended disposal rate that was part of the State Office of Administrative Hearing process.

The commission will hold a public hearing on this proposal in Austin on July 19, 2013, at 10:00 a.m., Building E, Room 254S, located at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-017-336-WS. The comment period closes July 22, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Tonya Baer, Radioactive Materials Division, (512) 239-1233.

TRD-201302315  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: June 7, 2013

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: June 11, 2013

◆ ◆ ◆  
Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Bacteria in the Dallas/Fort Worth Area

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft Implementation Plan concerning the 17 Total Maximum Daily Loads (TMDLs) for Bacteria in the Greater Trinity River Region in Dallas and Tarrant Counties.

The purpose of the public meeting is to provide the public an opportunity to comment on the draft Implementation Plan for bacteria in the 17 assessment units (AUs) comprising 15 segments (Segments 0805, 0822A, 0822B, 0841, 0841B, 0841C, 0841E, 0841G, 0841H, 0841J, 0841L, 0841M, 0841R, 0841T and 0841U) in the Greater Trinity River Region. The Implementation Plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management. The commission requests comment on each of the major components of the Implementation Plan: description of control actions and management measures, implementation strategy and tracking, review strategy and communication strategy. After the public comment period, TCEQ may revise the draft Implementation Plan, if appropriate. The final Implementation Plan will then be considered for approval by the commission. Upon approval of the Implementation Plan by the commission, the Implementation Plan will be made available on the TCEQ Web site.

A public comment meeting for the draft Implementation Plan will be held on July 25, 2013, at 6:30 p.m., in the Regional Forum Room at the North Central Texas Council of Governments (Centerpoint II building) offices at 616 Six Flags Drive, Arlington, Texas 76011. At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received. Written comments should be submitted to Dania Grundmann, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. Comments may be submitted electronically to [www5.tceq.texas.gov/rules/ecomments](http://www5.tceq.texas.gov/rules/ecomments) by midnight on August 2, 2013, and should reference the *Implementation Plan for Seventeen Total Maximum Daily Loads for Bacteria in the Greater Trinity River Region*.

For further information regarding the proposed Implementation Plan, please contact Dania Grundmann at (512) 239-3449 or [Dania.Grundmann@tceq.texas.gov](mailto:Dania.Grundmann@tceq.texas.gov). Copies of the draft Implementation Plan will be available and can be obtained via the commission's Web site at: [www.tceq.texas.gov/implementation/water/tmdl/tmdlnews.html](http://www.tceq.texas.gov/implementation/water/tmdl/tmdlnews.html) or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-201302387

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Notice of Water Quality Applications

The following notices were issued on May 31, 2013 through June 7, 2013.

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

HORIZON REGIONAL MUNICIPAL UTILITY DISTRICT, which operates a reverse osmosis water treatment plant, has applied for a major amendment to TCEQ Permit No. WQ0004191000 to authorize the replacement of the 25-acre irrigation field with a 25-acre evaporation pond and to decrease disposal of reverse osmosis reject water to an annual average flow not to exceed 521,400 gallons per day by evaporation. The existing permit authorizes disposal of reverse osmosis reject water at an annual average flow not to exceed 529,400 gallons per day via evaporation and irrigation. This permit will not authorize a discharge of pollutants into water in the State. The treatment plant is located at 14451 Horizon Boulevard, El Paso County, Texas 79928, and the disposal site is located at 15000 Horizon Boulevard; both the treatment plant and the disposal site are located approximately 5 miles east of the intersection of Horizon Boulevard (Highway 1281) and Interstate Highway 10, El Paso County, Texas 79928.

CITY OF ANAHUAC AND TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010396001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the west bank of Anahuac Ditch, approximately 2,200 feet southeast of the intersection of Farm-to-Market Road 563 and Poskey Road, southeast of the City of Anahuac in Chambers County, Texas 77514.

FALLBROOK UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010919001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 811 West Road, Houston, Texas north of Halls Bayou, 1,300 feet south of West Road and 2,500 feet east of Stuebner-Airline Road (Veteran's Memorial Drive), and approximately 1.0 mile west of Interstate Highway 45 in Harris County, Texas.

CITY OF NEW LONDON has applied for a renewal of TPDES Permit No. WQ0012376001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 7,500 feet northwest of the intersection of the State Highway 323 and Farm-to-Market Road 838 and approximately 5,000 feet east of Farm-to-Market Road 2089 in Rusk County, Texas 75682.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 6 has applied for a renewal of TPDES Permit No. WQ0012499001, 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 at 13600 Cherry Hollow Lane, approximately 2,000 feet

west of Synott Road, 4,300 feet south of Westheimer Road and 5,800 feet east of Highway 6 in Harris County, Texas 77082.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 285 has applied for a renewal of TPDES Permit No. WQ0012716001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,150,000 gallons per day. The facility is located at 6436 East Sam Houston Parkway North, adjacent to the west bank of Carpenter Bayou, approximately one mile north of Wallisville Road Bridge and 2,800 feet east of East Belt Drive in Harris County, Texas 77049.

NERRO SUPPLY, LLC has applied for a renewal of TPDES Permit No. WQ0013643001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1.5 miles southeast of the intersection of Farm-to-Market Roads 2354 and 1405, on the south side of Farm-to-Market Road 2354 in Baytown, Chambers County, Texas 77523.

BOSQUE UTILITIES CORPORATION has applied for a renewal of TPDES Permit No. WQ0014627001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 9500 Helms Trail, on the northeast corner of the intersection of Helms Trail and Interstate Highway 20 in Kaufman County, Texas 75126.

HALEPASKA PROPERTY MANAGEMENT LLC has applied for a new permit, proposed TPDES Permit No. WQ0015071001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 1568 Refugio Highway, Victoria in Victoria County, Texas 77905.

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 KENNARD has applied for a minor amendment to the TPDES Permit No. WQ0011474001 to authorize the addition of chlorination to the treatment process. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas 75847.

TRD-201302406  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: June 12, 2013



### Notice of Water Rights Application

Notice issued June 5, 2013.

APPLICATION NO. 12896; New Birmingham Resources, LLC., P.O. Box 665, Rusk, Texas 75785, Applicant, seeks a temporary water use permit to divert and use not to exceed 1,200 acre-feet of water from a point on Wiggins Creek (Brewer Lake), Sabine River Basin within a period of three years for mining and industrial purposes in Smith County. The water will be diverted at a maximum diversion rate of 13.363 cfs (6,000 gpm) from a point near Interstate 20 approximately 7.9 miles north of the town of Tyler and 6.4 miles southwest of the town of Winona at Latitude 32.460321°N, Longitude 95.269748°W, in

Smith County. The applicant indicates the diversion point is located in Zip Code 75706. The application and fees were received on August 6, 2012. Additional information was received on January 17, February 13 and 15, 2013. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 20, 2013. The TCEQ Executive Director has completed the technical review of the application and prepared a temporary permit. The draft temporary permit, if granted, would contain special conditions, including but not limited to, streamflow restrictions and the installation of screens on diversion structures. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by June 24, 2013.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302407  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: June 12, 2013



### Texas Facilities Commission

Request for Proposals #303-4-20384

The Texas Facilities Commission ("TFC"), on behalf of the Office of the Attorney General ("OAG"), announces the issuance of Request for Proposals ("RFP") #303-4-20384. TFC seeks a five (5) or ten (10) year lease of approximately 2,057 square feet of office space in Killeen, Bell County, Texas.

The deadline for questions is July 11, 2013 and the deadline for proposals is July 18, 2013 at 3:00 p.m. The award date is August 23, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jon Conant, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=106240](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106240).

TRD-201302388  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: June 11, 2013



#### Request for Proposals #303-4-20386

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-4-20386. TFC seeks a five (5) or ten (10) year lease of approximately 4,926 square feet of usable office space and 10,400 square feet of usable warehouse space (total of 15,326 usable square feet) in the City of Huntsville, Walker County, Texas.

The deadline for questions is July 12, 2013, and the deadline for proposals is July 19, 2013 at 3:00 p.m. The award date is August 23, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Jon Conant at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=106289](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106289).

TRD-201302402  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: June 11, 2013



#### Request for Proposals #303-5-20385

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-5-20385. TFC seeks a five (5) or ten (10) year lease of approximately 7,697 square feet of office space in Schertz, Cibolo, or Universal City, Texas.

The deadline for questions is July 10, 2013, and the deadline for proposals is July 24, 2013, at 3:00 p.m. The award date is August 30, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease

on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=106272](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106272).

TRD-201302395  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: June 11, 2013



#### Request for Proposals #303-5-20387

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-5-20387. TFC seeks a five (5) or ten (10) year lease of approximately 4,973 square feet of office space in New Braunfels (78130), Seguin (78155) or San Marcos (78666 or 78667), Texas.

The deadline for questions is July 11, 2013, and the deadline for proposals is July 25, 2013 at 3:00 p.m. The award date is August 30, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=106293](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=106293).

TRD-201302403  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: June 11, 2013



#### General Land Office

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

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 10, through June 10th, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on June 12, 2013. The

public comment period for this project will close at 5:00 p.m. on July 12, 2013.

#### FEDERAL AGENCY ACTIVITIES:

**Federal Agency: USACE-Galveston District;** Project Location: The approximately 4-mile-long Galveston Harbor Channel is included in the Galveston Channel Reach of the Houston-Galveston Navigation Channels, Texas. Project, and provides entry to the Port of Galveston located on the upper Texas coast near the mouth of Galveston Bay in Galveston County, Texas.

Notice of Availability for the Environmental Assessment, Galveston Harbor Channel Extension, Post Authorization Change Report, Galveston County, Texas: The Galveston District is informing interested parties of the prepared Draft Environmental Assessment (DEA) in accordance with the National Environmental Policy Act (NEPA), Public Law 91-190, and regulations for implementing the Procedural Provisions of the NEPA, 40 Code of Federal Regulations 1500-1508. This notice is being distributed to assist in collecting facts and recommendations concerning the tentatively recommended channel improvements to extend the limits of the existing authorized 45-foot deep Galveston Harbor Channel for a distance of 2,571 feet to reach the end of the limits of the authorized and currently maintained 40-foot portion of the channel. The tentatively recommended channel improvements would deepen the 40-foot deep by 1,085-foot wide segment of the Galveston Harbor Channel from Station 20+000 (near POG Pier 38) to Station 22+571 (near Pelican Island Bridge) to a 45-foot deep by 1,075-foot wide channel. The proposed project would be consistent with the newly deepened -45 feet mean low tide (MLT) movement of deep-draft vessels transporting commodities to dock facilities located along this terminal section of the Galveston Harbor Channel.

The document is available online at <http://www.swg.usace.army.mil/BusinessWithUs/PlanningEnvironmentalBranch/DocumentsforPublicReview.aspx>.

CMP Project No.: 13-1178-F2

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Ms. Land at the above address or by email.

TRD-201302436

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 12, 2013



## Texas Health and Human Services Commission

### Correction of Public Notice

The Texas Health and Human Services Commission published a public notice in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3693), regarding the intent to submit a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating un-

der the authority of §1115 of the Social Security Act. The Texas Healthcare Transformation Quality Improvement Program waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The Texas Healthcare Transformation Quality Improvement Program serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

Currently, the 1115 Demonstration waiver, known as the Texas Healthcare Transformation Quality Improvement Program allows for acute care facilities to be reimbursed utilizing waiver funding. Effective September 1, 2013, inpatient services for STAR+PLUS enrollees will be reimbursed for up to 30 days. After 30 days, reimbursement will not be considered until the enrollee has been out of the hospital for 60 consecutive days. The policy does not apply to certain approved transplants, nor to children age 20 and younger.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us).

TRD-201302410

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 12, 2013



### Correction of Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3847) regarding the intent to submit an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

The Delivery System Reform Incentive Payment (DSRIP) funding in the waiver is for incentive payments to hospitals and other providers who develop programs or strategies to enhance access to health care, and increase the quality of care, cost-effectiveness of care provided, and the health of the patients and families served. HHSC is requesting an amendment to the THTQIP that would allocate unutilized Demonstration Year (DY) 2 (October 1, 2012 - September 30, 2013) DSRIP funds into DYs 3 - 5 (October 1, 2013 - September 30, 2016). Based on the initial Regional Healthcare Partnership (RHP) plans submitted to CMS, there are approximately \$232 million unspent DY 2 DSRIP funds, but this may grow as project valuations are finalized with CMS.

This amendment would allow HHSC to fund state priority initiatives with unspent DSRIP funds for DY 2.

The state would seek federal approval for the specific priority state initiatives, which may include, but are not limited to, behavioral health-care, primary care, interconception care, adult immunizations, tobacco cessation and workforce issues.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302430

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 12, 2013



### Correction of Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3846) regarding the intent to submit a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

The Delivery System Reform Incentive Payment (DSRIP) funding in the waiver is for incentive payments to hospitals and other providers who develop programs or strategies to enhance access to health care, and increase the quality of care, cost-effectiveness of care provided, and the health of the patients and families served. For DSRIP projects, the non-federal share of the payment (roughly 40 percent) is funded through intergovernmental transfers (IGT) from local and state governmental entities to draw down the associated federal funds (roughly 60 percent). HHSC is requesting an amendment to the THTQIP that would create an administrative pool funded by a small portion of DSRIP IGT funds (up to one percent or \$10,000,000 per year of the waiver). The IGT allocated to the administrative pool will be matched at the 50/50 rate. CMS and HHSC would agree to an administrative protocol governing the specific use of these funds and limiting the use to the monitoring of the DSRIP program. CMS has indicated that such a monitoring program is necessary in order to affect the continued progression of the DSRIP program.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302432

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: June 12, 2013



### Correction of Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3846) regarding the intent to submit a request for an amendment to the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements, and directs more funding to hospitals that serve large numbers of uninsured patients.

The Delivery System Reform Incentive Payment (DSRIP) funding in the waiver is for incentive payments to hospitals and other providers who develop programs or strategies to enhance access to health care, and increase the quality of care, cost-effectiveness of care provided, and the health of the patients and families served. HHSC is requesting an amendment to the THTQIP that would provide either room under the overall waiver budget neutrality cap or unspent DSRIP funds from Demonstration Year (DY) 2, which is October 1, 2012 - September 30, 2013, or later waiver years, to count as a "credit" toward Upper Payment Limit (UPL) expenditures made during two months in late 2011. A separate program under the THTQIP, the Uncompensated Care (UC) pool, which replaces the former UPL supplemental payment program, provides funding to eligible providers for the uncompensated costs of care to Medicaid eligible or uninsured individuals.

Currently, funds from the UC pool will need to be credited against these UPL expenditures at some point during the waiver. It appears that Texas providers will have more uncompensated care costs than the UC pool allows and it is likely that not all DSRIP pool dollars will be used. Additionally, waiver expenditures may remain below the overall budget neutrality cap. Given these possibilities, HHSC seeks the flexibility to use either cap room or unspent DSRIP funds to offset the UPL expenditures rather than UC pool funds.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3427, telephone (512) 462-6293, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302434



Notice of Public Hearing on Proposed Medicaid Payment Rates for Ambulance Services, Substance Use Disorder Services, Anesthesia Services, Physician Services (Including Physician-Administered Drugs, Evaluation and Management Services, General and Integumentary Services, and Eye and Ocular Services)

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 17, 2013, at 8:30 a.m., to receive comment on proposed Medicaid payment rates for Ambulance Services, Substance Use Disorder Services, Anesthesia Services, and Physician Services (including Physician-Administered Drugs, Evaluation and Management Services, Eye and Ocular Services, and General and Integumentary Services).

The public hearing will be held in the Department of State Health Services Public Hearing Room, Winters Building, located at 701 W. 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Medicaid services are proposed to be effective September 1, 2013, for the following services:

- (1) Ambulance
- (2) Substance Use Disorder Services
- (3) Anesthesia Services
- (4) Eye and Ocular Services
- (5) Physician-Administered Drugs
- (6) General and Integumentary System Surgery
- (7) Evaluation and Management Services

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

- §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;
- §355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals, medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy; and
- §355.8241, which addresses the reimbursement methodology for chemical dependency treatment facilities;
- §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps); and
- §355.8600, which addresses the reimbursement methodology for ambulance services.

The reimbursement rates proposed reflect applicable adjustments in response to direction received in the 2014-2015 General Appropriations Act (Article II, Senate Bill 1, 83rd Legislature, Regular Session, 2013), effective September 1, 2013, including reductions described in the Health and Human Services Commission's portion of article II, Rider 51, Medicaid Funding Reduction and Cost Containment.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after July 3, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [chris.zinger@hhsc.state.tx.us](mailto:chris.zinger@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [chris.zinger@hhsc.state.tx.us](mailto:chris.zinger@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown-Heaty Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201302438  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 12, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Physical, Occupational, and Speech Therapy Provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Health Agencies (HHA), and Independent Therapists

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 10, 2013, at 8:30 a.m., to receive comment on proposed Medicaid payment rates for the Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists.

The public hearing will be held in the Department of State Health Services Public Hearing Room, Winters Building, located at 701 W. 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Medicaid therapy services are proposed to be effective September 1, 2013, for the following providers:

- (1) Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF)
- (2) Home Health Agencies (HHA)

(3) Independent Therapists

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

- §355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;
- §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;
- §355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy; and
- §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable adjustments in response to direction received in the 2014 - 2015 General Appropriations Act (Article II, Senate Bill 1, 83rd Legislature, Regular Session, 2013), effective September 1, 2013, including reductions described in the Health and Human Services Commission's portion of article II, Rider 51, Medicaid Funding Reduction and Cost Containment.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after June 26, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [chris.zinger@hhsc.state.tx.us](mailto:chris.zinger@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [chris.zinger@hhsc.state.tx.us](mailto:chris.zinger@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Brown-Healy Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201302437  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 12, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assis-

tance under Title XIX of the Social Security Act. The proposed amendment is effective July 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by including fees for new services and by modifying fees for existing services. These rate actions are being taken to comply with §355.8085(1)(B), Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners, in Title 1, Part 15, Chapter 355, Subchapter J, of the Texas Administrative Code, which requires the Health and Human Services Commission to review fees for individual services at least once every two years. After performing the required review, the Health and Human Services Commission has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

- Dental Services;
- Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;
- Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);
- Licensed Clinical Social Worker Services;
- Licensed Professional Counselor Services;
- Licensed Marriage and Family Therapist Services;
- Physicians and Other Practitioners; and
- Chemical Dependency Treatment Facilities.

The proposed amendment is estimated to result in an annual savings of \$4,713,009 for federal fiscal year (FFY) 2013, consisting of \$2,794,814 in federal funds and \$1,918,195 in state general revenue. For FFY 2014, the estimated annual savings is \$19,877,739, consisting of \$11,666,245 in federal funds and \$8,211,494 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at [dan.huggins@hhsc.state.tx.us](mailto:dan.huggins@hhsc.state.tx.us). Copies of the proposal also will be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201302411  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 12, 2013



**Department of State Health Services**

Designation of Vickery Women's Health Center as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Vickery Women's Health Center at 8224 Park Lane, Suite 130, Dallas, Texas 75231. The



designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Pamela Lauer, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 776-2775. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201302382  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: June 10, 2013

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of AVIVA LIFE AND ANNUITY COMPANY to ATHENE ANNUITY AND LIFE COMPANY, a life, accident and/or health company. The home office is in West Des Moines, Iowa.

Application to change the name of GMAC INSURANCE COMPANY ONLINE, INC. to NATIONAL GENERAL INSURANCE ONLINE, INC., a fire and/or casualty company. The home office is in Maryland Heights, Missouri.

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, MC 305-2C, Austin, Texas 78701.

TRD-201302405  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: June 12, 2013

◆ ◆ ◆  
**Texas Lottery Commission**

**Notice of Public Comment Hearing**

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.315 relating to "Mega Millions" On-Line Game Rule will be held on Wednesday, July 17, 2013, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Eric Williams at (512) 344-5241 at least 72 hours prior to the public hearing.

TRD-201302416  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: June 12, 2013

◆ ◆ ◆  
**Texas Low-Level Radioactive Waste Disposal Compact Commission**

**Notice of Receipt of Application for Importation of Waste and Import Agreement**

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

University of Missouri (TLLRWDC #1-0039-00)  
1513 Research Park Drive  
Columbia, MO 65211

The application is being placed on the Compact Commission web site, [www.tllrwdec.org](http://www.tllrwdec.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 8, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attention: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, TX 78701

Comments may also be submitted via email to: [administration@tllrwdec.org](mailto:administration@tllrwdec.org).

TRD-201302400  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: June 11, 2013

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on June 7, 2013 to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 41569.

The requested amendment is to expand the service area footprint to include all or portions of municipalities and/or unincorporated areas in Cameron and Hidalgo Counties.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41569.

TRD-201302394  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 11, 2013

◆ ◆ ◆  
**Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on June 5, 2013 for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of BCI James Cable, LLC for a State-Issued Certificate of Franchise Authority, Project Number 41559.

The requested SICFA service area consists of Jacksboro, Decatur, Runaway Bay, Huntington, Bowie, Montague County (unincorporated area 3 mile radius circle around the city limits of Bowie, Texas), Wise County (unincorporated area 2 mile radius circle around the city limits of Runaway Bay, Texas and 3 mile radius circle around the city limits of Decatur, Texas).

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41559.

TRD-201302393

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 11, 2013



#### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on June 4, 2013, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Joint Application of Alenco Communications, Inc. d/b/a ACI (ACI) and AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change. Docket Number 41553.

The Application: ACI filed an application for a minor boundary amendment to realign the boundary between the Delores exchange of ACI, and the Laredo exchange of AT&T Texas. The amendment will transfer a portion of AT&T Texas' serving area in the Laredo exchange to ACI's Delores exchange. AT&T Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 1, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41553.

TRD-201302389

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 11, 2013



#### Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 5, 2013 to relinquish designation as an eligible telecommunications carrier (ETC).

Docket Title and Number: Application of ETEX Communications, L.P. d/b/a ETEX Wireless to Relinquish Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418(j), Docket Number 41556.

The Application: ETEX Communications, L.P. d/b/a ETEX Wireless (ETEX Wireless) filed notification of its request to relinquish ETC designation effective September 4, 2013. In the application, ETEX Wireless informed the commission that as of March 11, 2013, ETEX Wireless is no longer providing mobile wireless services and thus is requesting relinquishment of its ETC designation. ETEX Wireless acknowledged that the company is not the sole ETC in the service area for which it received ETC designation.

ETEX Wireless requested that the relinquishment be approved effective September 4, 2013. ETEX Wireless affirmed that ETEX Telephone Cooperative, Inc. is designated as an ETC in the same service area and can offer federally supported service to ETEX Wireless's customers. In addition, ETEX Wireless entered into an agreement with Verizon Wireless allowing the company's customers to take advantage of special promotional offers to transition to Verizon Wireless or the customers could choose to select an alternative provider.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 41556.

TRD-201302392

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 11, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 23, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Blossom Telephone Company, Inc. to Implement Minor Rate Changes Pursuant to Substantive Rule §26.171, Tariff Control Number 41518.

The Application: Blossom Telephone Company, Inc. (Blossom) filed an application with the commission for revisions to its local exchange service tariffs. Blossom proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Blossom is \$14,174 in gross annual intrastate revenues. The Applicant has 842 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 13, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 13, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41518.

TRD-201302391  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 11, 2013



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 4, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Industry Telephone Company for Approval of Extended Local Calling Service, Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 41555.

The Application: Industry Telephone Company (Industry) filed an application with the commission to offer extended local calling service. Industry proposed an effective date of June 20, 2013. The estimated revenue decrease to be recognized by the Applicant is \$21.72 in gross annual intrastate revenues. The Applicant has 2,136 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 1, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 1, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41555.

TRD-201302390  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 11, 2013



#### Public Notice of Workshop and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding amending commission substantive rules relating to Lifeline and Linkup Service to conform to the 2012 FCC Lifeline and Linkup Reform Order. The workshop will be held on Friday, June 21, 2013, at 9:30 a.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 Number 41024, Rule-making to Consider Amending Substantive Rule §26.412, relating to

Lifeline Service Program and §26.413, relating to Linkup Service Program, has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments to the draft rule.

On May 30, 2013, the commission shall make a copy of the draft rule available in Central Records under Project Number 41024.

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All comments should reference Project Number 41024.

Questions concerning the workshop or this notice should be referred to Jay Stone, Program Administrator, Operations Division, (512) 936-7425. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201302409  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 12, 2013



### South East Texas Regional Planning Commission

#### Request for Proposals for 9-1-1 Electrician Services

This notice supersedes a previous notice that was published in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3854).

**GENERAL:** The 9-1-1 Emergency Network, a Division of the South East Texas Regional Planning Commission (SETRPC), is interested in purchasing Licensed/Bonded Electrician services for September 1, 2013 through August 31, 2015.

**INVITATION FOR BID:** The competitive Request for Proposal (RFP) will be available at the 9-1-1 Emergency Network office located at 2210 Eastex Freeway, Beaumont, Texas 77703 or the SETRPC website ([www.setrpc.org](http://www.setrpc.org)) after 10:00 a.m. on June 12, 2013. Except for holidays, the 9-1-1 Emergency Network office is open 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday. Copies of the RFP are available in Microsoft Office "Word" format at the above website. Once the website is displayed, navigate your cursor to the left "Main Menu" column, click on "RFP", under "Request for Proposal" click on "9-1-1 Electrician Services RFP" and download the "Word" document. All bids are due on or before 10:00 a.m. Wednesday July 31, 2013 (late bids will not be accepted).

**BID OPENING:** Bid opening will be at 10:00 a.m., Thursday August 1, 2013, at the SETRPC office at 2210 Eastex Freeway, Beaumont, Texas. The 9-1-1 Emergency Network reserves the right to reject any or all bids and does not bind itself to accept the lowest bid for the Electrical Services, or any part thereof, and shall have the right to ask for new bids for the whole or parts.

TRD-201302404  
Pete De La Cruz  
Director of 9-1-1 Emergency Network  
South East Texas Regional Planning Commission  
Filed: June 11, 2013



### Texas Department of Transportation

Notice of Intent - Environmental Impact Statement for SH 45 Southwest, Travis and Hays Counties, Texas

Pursuant to 43 TAC §2.103(a), the Texas Department of Transportation (department) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project. The proposed project would construct State Highway (SH) 45 Southwest (SW) from State Loop 1 (SL 1; MoPac) to Farm-to-Market (FM) 1626 in Travis and Hays Counties, Texas, a distance of approximately three and a half miles. The project would be funded with state and local governmental funds, and therefore the review will be conducted in compliance with state requirements.

The EIS will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment and operation of the project; surface water and groundwater impacts; impacts to historic and archeological resources; impacts to floodplains; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources.

The department will consider alternative actions to satisfy the identified purpose and need. The alternatives will include the no-build alternative and at least one roadway build alternative. The roadway build alternatives will consist of a controlled access, four-lane divided road. Alternative designs and funding alternatives will include tolling options or new managed lanes.

The department does not believe the project will require approvals by the federal government. It does not appear that a Section 404 Permit from the U.S. Army Corps of Engineers for dredge and placement of fill within waters of the United States will be needed. It does not appear the project will take any federally listed threatened or endangered species. The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the purpose and need for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. The department will publish notice that scoping meetings will be held. The department will publish notices in newspapers of general circulation in the project area at least 30 days prior to the meeting, and again approximately 10 days prior to the meeting.

The department will complete the procedures for public participation and coordination with other agencies as described in state law. In addition to any scoping meetings, the department will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English and Spanish. Provisions will be made for those with special communication needs, including translation if requested. The department will also send correspondence to appropriate federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are

identified and addressed. Comments or questions should be directed to the department at the address set forth below.

The department currently anticipates that the draft EIS will be completed in Summer 2014, and the final EIS will be approved in Summer 2015.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Mr. Carlos Swonke, P.G., Director, Environmental Affairs Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483; (512) 416-3001.

TRD-201302397  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: June 11, 2013

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## Texas Water Development Board

### Applications for June 2013

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73661, a request from the City of Comanche, 114 W. Central Ave., Comanche, Texas 76442-3215, received March 12, 2013, for financial assistance in the amount of \$1,071,500, consisting of a \$755,000 loan and \$316,500 in loan forgiveness from the Clean Water State Revolving Fund for wastewater system improvements, utilizing the pre-design funding option.

Project ID #62583, a request from JJM Development, Inc. dba Valley Acres Mobile Home Park, 797 Barley Dr., Canutillo, Texas 79835-6453, received August 31, 2012, for financial assistance in the amount of \$50,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #10437, a request from the City of Kosse, P.O. Box 116, Kosse, Texas 76653-0116, received February 26, 2013, for financial assistance in the amount of \$449,000 consisting of a loan in the amount of \$225,000 and a grant in the amount of \$224,000 from the Economically Distressed Areas Program for planning, acquisition, and design costs for water system improvements.

Project ID #21732, a request from the Bell County WCID No 2, P.O. Box 338, Little River, Texas 76554-0338, received March 6, 2013, for a loan in the amount of \$1,500,000 from the Texas Water Development Fund to finance planning, design, and construction costs relating to wastewater system improvements, utilizing the pre-design funding option.

TRD-201302396  
Kenneth Petersen  
General Counsel  
Texas Water Development Board  
Filed: June 11, 2013

## 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)

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**\*Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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