TEXAS REGISTER

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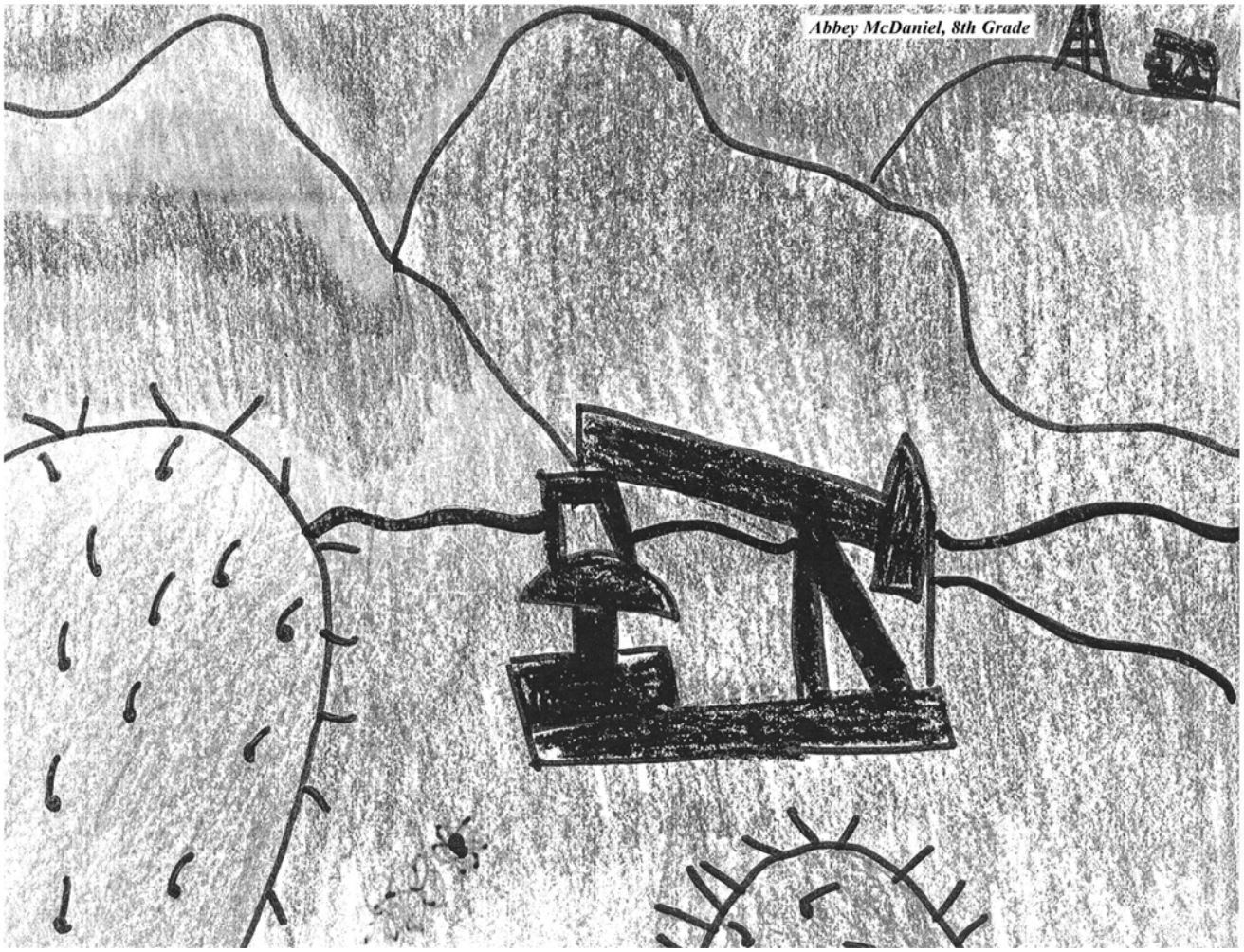

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

Additional information about state government may be found here:
http://www.texas.gov

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

THE 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 May 31, 2016

Appointed to the San Jacinto River Authority Board of Directors for a term to expire October 16, 2017, Gary T. Renola of Seabrook (replacing Joseph L. "Joe" Stunja of Kingwood who resigned).

Appointed to the San Jacinto River Authority Board of Directors for a term to expire October 16, 2021, Ronald W. "Ronnie" Anderson of Mont Belvieu (replacing Mary L. "Marisa" Rummell of Spring whose term expired).

Appointed to the San Jacinto River Authority Board of Directors for a term to expire October 16, 2021, Fredrick D. "Fred" Koetting of The Woodlands (Mr. Koetting is being reappointed).

Greg Abbott, Governor

TRD-201602884

♦ ♦ ♦

Proclamation 41-3482

TO ALL WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House of Representatives in District No. 120 which consists of a part of Bexar County; and

WHEREAS, the results of a special election held on Saturday, May 7, 2016, have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.025(d) of the Texas Election Code requires a special runoff election to be held not earlier than the 70th or later than the 77th day after the date the final canvass is completed; and

WHEREAS, the final canvass occurred on May 18, 2016; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, do hereby order a special election to be held in House District No. 120 on Tuesday, August 2, 2016, for the purpose of electing a state representative to serve the remainder of the term of The Honorable Ruth Jones McClendon.

Early voting by personal appearance shall begin on Monday, July 25, 2016, and shall end on Friday, July 29, 2016, in accordance with Section 85.001 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Bexar County, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 120, and its result proclaimed in accordance with law.

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 18th day of May, 2016.

Greg Abbott, Governor

TRD-201602885

♦ ♦ ♦

Proclamation 41-3483

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, do hereby certify that the severe weather and flooding event that began on May 26, 2016, and that continues, has caused a disaster in Austin, Bandera, Bastrop, Brazoria, Brazos, Burleson, Coleman, Colorado, Erath, Fayette, Fort Bend, Grimes, Hidalgo, Hood, Jasper, Kleberg, Lee, Leon, Liberty, Lubbock, Montgomery, Palo Pinto, Parker, Polk, Robertson, San Jacinto, Tyler, Walker, Waller, Washington and Wharton counties 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 Austin, Bandera, Bastrop, Brazoria, Brazos, Burleson, Coleman, Colorado, Erath, Fayette, Fort Bend, Grimes, Hidalgo, Hood, Jasper, Kleberg, Lee, Leon, Liberty, Lubbock, Montgomery, Palo Pinto, Parker, Polk, Robertson, San Jacinto, Tyler, Walker, Waller, Washington and Wharton counties in the state of Texas.

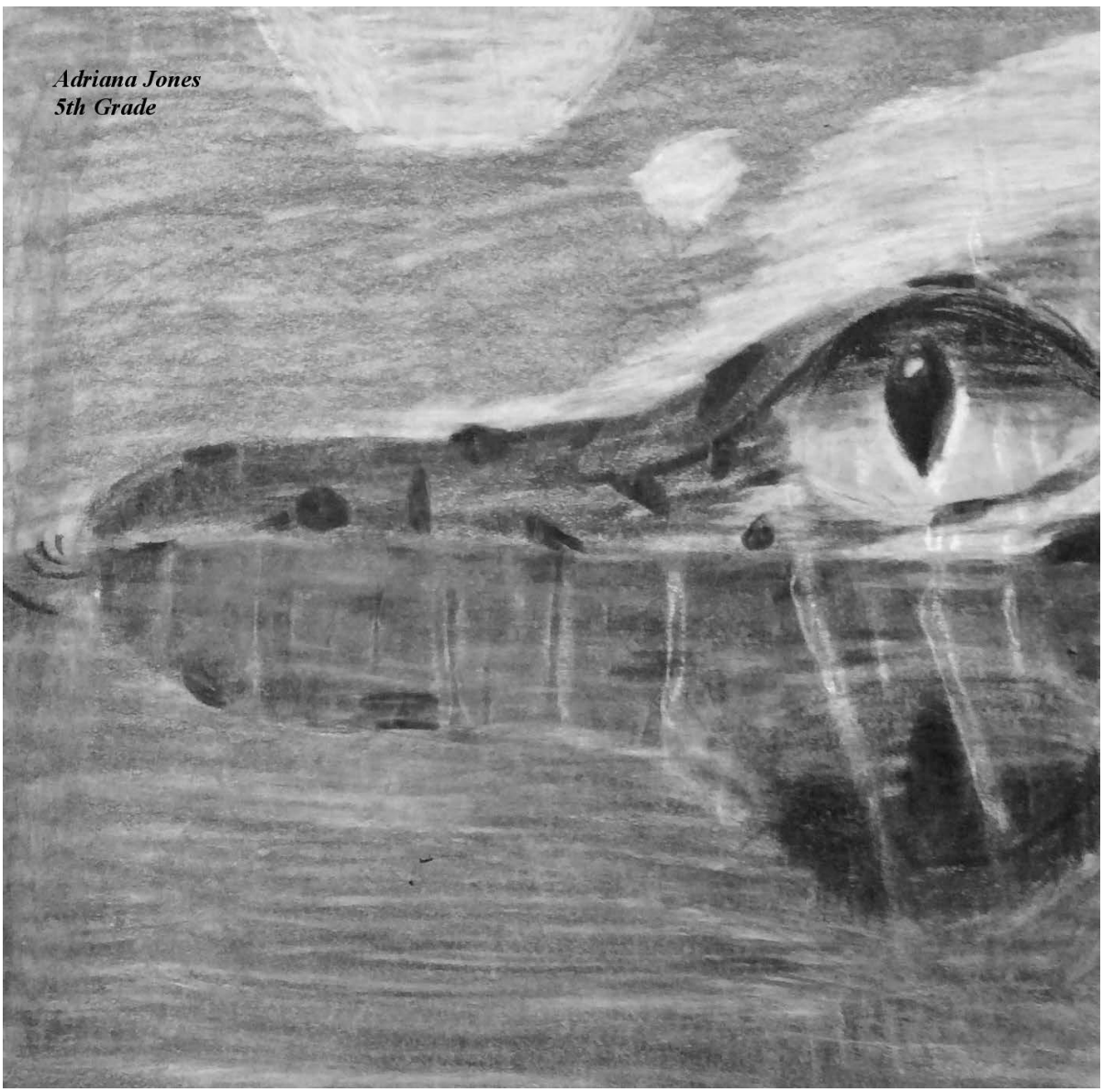
Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

Greg Abbott, Governor

TRD-201602886

♦ ♦ ♦


Adriana Jones
5th Grade

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0108-KP

Requestor:

The Honorable Rodney W. Anderson

Brazos County Attorney

300 East 26th Street, Suite 1300

Bryan, Texas 77803-5359

Re: The effect of section 130.0827 of the Education Code on the simultaneous service of an individual as a board trustee of Blinn College and Brazos County commissioner (RQ-0108-KP)

Briefs requested by June 23, 2016

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201602876
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 7, 2016

♦ ♦ ♦

Lily Pecoraro
5th Grade

TEXAS ETHICS COMMISSION

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

Ethics Advisory Opinions

EAO-539. Whether the revolving door law prohibits a former employee of the Texas Commission on Environmental Quality from performing certain services related to the remediation of leaking underground storage tanks. **(AOR-611)**

SUMMARY

The revolving door law provided by §572.054(b) of the Government Code does not prohibit a former TCEQ employee from performing certain services described in this opinion on behalf of a private firm related to the remediation of leaking underground storage tanks.

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

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

TRD-201602755
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: June 2, 2016

♦ ♦ ♦

Alex Fievre
5th Grade

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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

The State Office of Administrative Hearings (SOAH) proposes to amend Chapter 159, Rules of Procedure for Administrative License Suspension Hearings, consisting of Subchapter A, '§159.3, 159.5, and 159.7; Subchapter B, §159.51; Subchapter C, §159.101 and §159.103; Subchapter D, §159.151; and Subchapter E, §159.213. SOAH also proposes new §159.105 under Subchapter C.

The existing subchapters have been developed to provide a uniform set of procedural rules to be followed in administrative license suspension hearings at SOAH. The proposed amendments and new rule are to make the language more understandable and to make the rules easier to use.

Thomas H. Walston, General Counsel, has determined that for the first five-year period the amendments and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Walston, also has determined that for the first five-year period the amendments and new rule are in effect, the anticipated public benefit will be in providing clearer, more uniform, and better-organized procedures for participants in administrative license suspension hearings at SOAH. There will be no effect on small businesses as a result of enforcing the amendments and new rule, and there is no anticipated economic cost to individuals who are required to comply with the proposed amendments and new rule.

Written comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Norma Lopez, Executive Assistant, State Office of Administrative Hearings, to P.O. Box 13025, Austin, Texas 78711-3025, by email to norma.lopez@soah.texas.gov, or by facsimile to (512) 463-7791.

SUBCHAPTER A. GENERAL

1 TAC §§159.3, 159.5, 159.7

The amendments are proposed under Government Code, Chapter 2003, §2003.050, which requires SOAH to adopt procedural rules that relate to the hearings it conducts, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001, 2003, and Transportation Code Chapter 524.

§159.3. Definitions.

In this chapter, the following terms have the meaning indicated:

(1) - (15) (No change.)

(16) Public place--Defined in Texas Penal Code §1.07 [~~Chapter 1,~~] and Texas Transportation Code §524.001[, ~~Chapter 524~~].

(17) (No change.)

(18) The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; Chief Judge; party; [~~law;~~] person; and SOAH.

§159.5. Computation of Time.

Time shall be computed in the manner provided in 1 Texas Administrative Code §155.7. [~~In computing time periods prescribed by this chapter or by a judge's order, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, a Sunday, an official state holiday, or another day on which SOAH is closed, in which case the time period will be deemed to end on the next day that SOAH is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided in this chapter or a judge's order. However, if the period within which to act is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, unless this chapter or a judge's order otherwise specifically provides.~~]

§159.7. Other SOAH Rules of Procedure.

Other SOAH rules of procedure found at Chapters 155 of this title (relating to Rules of Procedure), 157 of this title (relating to Temporary Administrative Law Judges) and 161 of this title (relating to Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The rules that specifically apply include:

(1) Subchapter D, §§155.151 - 155.157 (relating to Assignment of Judges to Cases, Disqualification or Recusal of Judges, Powers and Duties, Orders, and Sanctioning Authority);

[~~(1) Subchapter D, §155.151 of this title (relating to Assignment of Judges to Cases);~~]

[~~(2) Subchapter D, §155.153 of this title (relating to Powers and Duties);~~]

(2) [~~(3)~~] Subchapter E, §155.201 of this title (relating to Representation of Parties);

(3) [~~(4)~~] Subchapter I, §155.417 of this title (relating to Stipulations);

(4) [~~(5)~~] Subchapter I, §155.425 of this title (relating to Procedure at Hearing);

(5) [~~(6)~~] Subchapter I, §155.431 of this title (relating to Conduct and Decorum);

(6) [~~(7)~~] §157.1 of this title (relating to Temporary Administrative Law Judges); and

(7) [~~(8)~~] §161.1 of this title (relating to Charges for Copies of Public Information).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2016.

TRD-201602848
Thomas H. Walston
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 475-1276

♦ ♦ ♦

SUBCHAPTER B. REPRESENTATION

1 TAC §159.51

The amendments are proposed under Government Code, Chapter 2003, §2003.050, which requires SOAH to adopt procedural rules that relate to the hearings it conducts, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001, 2003, and Transportation Code Chapter 524.

§159.51. Withdrawal of Counsel.

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

(c) If the motion to withdraw is granted, the withdrawing attorney shall immediately forward the notice of hearing, all additional information about settings and deadlines, and any discovery obtained for the case to a self-represented defendant or to the substitute attorney for a defendant who is represented.

[~~(c) If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the defendant in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and about which the attorney has not already notified the defendant.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Thomas H. Walston
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-1276

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SUBCHAPTER C. WITNESSES AND SUBPOENAS

1 TAC §§159.101, 159.103, 159.105

The amendments and new rule are proposed under Government Code, Chapter 2003, §2003.050, which requires SOAH to adopt procedural rules that relate to the hearings it conducts, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments and new rule affect Government Code, Chapters 2001, 2003, and Transportation Code Chapter 524.

§159.101. Subpoenas Generally [~~Breath Test Operator and Technical Supervisor~~].

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) A subpoena must be issued on the form provided at www.soah.texas.gov.

(3) The party that causes a subpoena to be issued must take reasonable steps to avoid imposing undue burden or expense on the person served.

(4) A party or attorney that violates the requirements of this subchapter will be subject to sanctions as determined by the judge, including, but not limited to, the loss of authority to issue subpoenas for ALR hearings.

(5) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released from the subpoena and the subpoena will have no continuing effect.

(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the presence of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the presence of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) Subpoena request filed with judge.

(1) Not later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(A) a party intends to call more than two peace officers to testify as witnesses;

(B) a party seeks to compel the presence of witnesses who are not peace officers;

(C) a party seeks to compel the presence of the breath test operator or technical supervisor and, by affidavit based on personal knowledge, has established a genuine issue concerning the validity of the breath test that requires the appearance of the witness to resolve; or

(D) a defendant, who is not represented by an attorney, seeks to compel the presence of witnesses.

(2) A request for subpoena that is not granted prior to the hearing may be re-urged at the hearing. If the judge grants the request for a subpoena at the hearing, the hearing shall reconvene at a later date for the appearance of the witness.

(d) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or

(2) good cause has not been demonstrated.

[(a) A request for the issuance of a subpoena for the appearance of a breath test operator or technical supervisor shall include an affidavit based on personal knowledge establishing a genuine issue concerning the validity of the breath test that requires the appearance of the witness to resolve. A request for subpoena that is not granted prior to the hearing may be re-urged at the hearing if the evidence raises such an issue. If the ALJ grants the request during the hearing, the hearing shall reconvene at a later date for the appearance of the witness.]

[(b) The provisions found at §159.103(a), (d), (f)(1), (3), and (4), (g)(3), (h) and (i) of this title (relating to Subpoenas) also apply to this section.]

§159.103. Issuance and Service of Subpoenas.

(a) A party that issues or is granted a subpoena shall be responsible for having the subpoena served. The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney. A subpoena may also be served by accepted alternative methods established by a peace officer's law enforcement agency.

(b) A subpoena must be served at least five days before the hearing.

(c) After a subpoena is served upon a witness, the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. Upon the subpoenaed witness's appearance at the hearing, the party that issued the subpoena shall tender a witness fee check or money order in the amount of $10 to the witness. In addition, if the witness traveled more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be that listed in the state mileage guide at https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.

(d) If the hearing is conducted telephonically, the party that issued the subpoena shall mail the witness fee check or money order to the witness within one day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one day of the conclusion of the hearing, the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness.

(e) If a party that served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one day from receipt of a default decision or any other order issued by the judge ordering payment of the fee and mileage reimbursement. Also within one day from receipt of the judge's order, the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness.

(f) If special equipment will be required in order to offer subpoenaed documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The party requesting a subpoena duces tecum may be required to advance the reasonable costs of reproducing the documents or tangible things requested.

(g) Service upon opposing party.

(1) A party that issues a subpoena must serve the opposing party with a copy of the subpoena on the same date it is issued.

(2) A party that requests a subpoena from a SOAH judge must serve the opposing party with a copy of the request at the time it is filed with SOAH.

(3) When a subpoena has been served, and not less than three days prior to the hearing, a party that has served a subpoena must provide the opposing party with a copy of the return of service.

(4) If a party fails to serve a copy of a subpoena on the opposing party, the subpoena may be rendered unenforceable by the judge.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party that requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date.

[(a) Scope.]

[(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.]

[(2) The party who causes a subpoena to be issued must take reasonable steps to avoid imposing undue burden or expense on the person served.]

[(3) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released.]

[(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the presence of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the presence of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.]

[(c) Subpoena request filed with judge. No later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:]

[(1) a party intends to call more than two peace officers to testify as witnesses;]

[(2) a party seeks to compel the presence of witnesses who are not peace officers; or]

[(3) a defendant, who is not represented by an attorney, seeks to compel the presence of witnesses.]

[(d) Subpoena form. A subpoena must be issued on the form provided at www.soah.state.tx.us.]

[(e) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discre-

~~tion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:]~~

~~[(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or]~~

~~[(2) good cause has not been demonstrated.]~~

~~[(f) Service upon witness.]~~

~~[(1) The party who issues or is granted a subpoena shall be responsible for having the subpoena served in accordance with Texas Rule of Civil Procedure 176.5, or by accepted alternative methods established by a peace officer's law enforcement agency.]~~

~~[(2) A subpoena must be served at least five calendar days before the hearing.]~~

~~[(3) After a subpoena issued by an attorney or judge is served upon a witness, the return of service of the subpoena must be filed at SOAH at least three calendar days prior to the hearing. Upon the subpoenaed witness's appearance at the hearing, the party who issued the subpoena shall tender a witness fee check or money order in the amount of $10 to the witness. In addition, if the witness traveled more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be that listed in the state mileage guide at https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.]~~

~~[(4) If the hearing is conducted telephonically, the party who issued the subpoena shall mail the witness fee check or money order to the witness within one business day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one business day of the conclusion of the hearing, the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness.]~~

~~[(5) If a party who served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one business day from receipt of a default decision or any other order issued by the Administrative Law Judge ordering payment of the fee and mileage reimbursement. Also within one business day from receipt of the Administrative Law Judge's order the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness.]~~

~~[(6) A party that fails to tender a witness fee or mileage reimbursement or fails to forward the certification to SOAH, as set out above, will be subject to sanctions as determined by the Administrative Law Judge, including, but not limited to, the loss of authority to issue subpoenas for Administrative License Revocation hearings.]~~

~~[(7) If special equipment will be required in order to offer subpoenaed documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The party requesting a subpoena duces tecum may be required to advance the reasonable costs of reproducing the documents or tangible things requested.]~~

~~[(g) Service upon opposing party.]~~

~~[(1) A party that issues a subpoena under subsection (b) of this section must serve the opposing party with a copy of the subpoena on the same date it is issued.]~~

~~[(2) A party that requests a subpoena under subsection (c) of this section must serve the opposing party with a copy of the request at the time it is filed with SOAH.]~~

~~[(3) A party that serves a subpoena must provide the opposing party with a copy of the return of service when the subpoena has been served and no less than three calendar days prior to the hearing.]~~

~~[(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party who requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date.]~~

~~[(i) Motion to quash or for protective order.]~~

~~[(1) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.]~~

~~[(2) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.]~~

~~[(3) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.]~~

~~[(4) If a subpoena request is denied or if a subpoena is quashed, any witness fee or mileage reimbursement fee that has been tendered to a witness or filed with SOAH shall be returned to the party who tendered the fees.]~~

§159.105. Motions to Quash or for Protective Order.

(a) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(b) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(c) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. DISCOVERY

1 TAC §159.151

The amendments are proposed under Government Code, Chapter 2003, §2003.050, which requires SOAH to adopt procedural rules that relate to the hearings it conducts, and Government

Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001, 2003, and Transportation Code Chapter 524.

§159.151. Prehearing Discovery.

(a) A request for discovery may not be filed before the request for hearing has been received by the Department. [~~The scope of prehearing discovery in these proceedings is as follows:~~]

[~~(1) A defendant shall be allowed to review, inspect and obtain copies of any non-privileged documents or records in DPS's ALR file or in the possession of DPS's ALR Division. All requests for discovery must be in writing and shall be served upon DPS as prescribed in 37 TAC §17.16 (relating to Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department). The request for discovery may not be filed with DPS sooner than the date of the request for hearing and may not be filed sooner than five days from the date of the notice of suspension. Upon a showing of harm by the defendant, and upon a showing of a proper request for discovery, no document in the ALR Division's actual possession will be admissible unless it was provided to the defendant within five business days of the receipt of the request for production. If the ALR Division does not have any or all the documents in its actual possession, it shall respond within five business days of defendant's request, setting out that it does not have the documents in its actual possession. DPS has a duty to supplement all its discovery responses within five business days from the time DPS's ALR Division receives possession of the discoverable documents. If a document is received by the defendant fewer than ten calendar days prior to the scheduled hearing, the judge shall grant a continuance on the request of a party. The judge may grant only one continuance for DPS's production of documents fewer than ten calendar days prior to the scheduled hearing.~~]

[~~(2) If a request for inspection, maintenance and/or repair records for the instrument used to test the defendant's specimen is made by the defendant, and those records are in the actual possession of DPS, DPS shall supply such records to the defendant within five days of receipt of the request, provided however, that the records to be provided shall be for the period covering 30 days prior to the test date and 30 days following the test date. If DPS fails to provide the properly requested records after the defendant has paid reasonable copying charges for the records, evidence of the breath specimen shall not be admitted into evidence.~~]

[~~(3) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings.~~]

[~~(4) Notwithstanding paragraph (1) of this section, if a party believes evidence from a third party is relevant and probative to the case, the party may request issuance of a subpoena duces tecum pursuant to §159.103 of this title (relating to Subpoenas) to have the evidence produced at the hearing. If a person subpoenaed under this section does not appear, the judge may grant a continuance to allow for enforcement of the subpoena.~~]

[~~(5) Notwithstanding anything to the contrary contained in this section, DPS has the right to request non-privileged documents from the defendant. Except in cases where sanctions may be sought for abuse of discovery under §155.157 of this title (relating to Sanctioning Authority), all requests from DPS shall be made under the provisions of this section.~~]

(b) No party shall file copies of discovery requests with SOAH.

(c) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings.

(d) Both parties have the right to review, inspect, and obtain copies of any non-privileged documents or records in the other party's possession.

(e) A request for discovery must be on a separate document from other pleadings and notices and clearly labeled as a request for discovery.

(f) A defendant's request for discovery from DPS's ALR Division shall be served in the manner specified in 37 Texas Administrative Code §17.16 (relating to Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department). DPS's request shall be served on Defendant at the address of record.

(g) Except as provided in subsection (j) of this section, responses to discovery must be sent to the requesting parties within five days after receipt of the request.

(h) If a party does not have any or all of the documents in its actual possession, it shall respond within five days of the request, stating that it does not have the documents in its actual possession. A party must supplement all its discovery responses within five days from the time the party receives the discoverable documents.

(i) If a document sought through discovery is received by the requesting party fewer than ten days before the scheduled hearing, the judge may grant a continuance on the request of that party. The judge may grant only one continuance based on recently obtained discovery.

(j) A defendant may request inspection, maintenance and/or repair records for the instrument used to test the defendant's breath specimen for the period covering 30 days prior to the test date and 30 days following the test date. If the records are in the actual possession of DPS, DPS shall supply the records to the defendant within ten days of receipt of the request. If DPS fails to provide properly requested records after the defendant has paid reasonable copying charges for them, evidence of the breath specimen shall not be admitted into evidence.

(k) A party that seeks relevant, probative records from a third party may request issuance of a subpoena duces tecum pursuant to Subchapter C (relating to Witnesses and Subpoenas) to have the evidence produced at the hearing. If a person subpoenaed under this section does not appear, the judge may grant a continuance to allow for enforcement of the subpoena.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. HEARING AND PREHEARING

1 TAC §159.213

The amendments are proposed under Government Code, Chapter 2003, §2003.050, which requires SOAH to adopt procedural rules that relate to the hearings it conducts, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendments affect Government Code, Chapters 2001, 2003, and Transportation Code Chapter 524.

§159.213. Failure to Attend Hearing and Default.

(a) Upon proof by DPS that notice of the hearing on the merits was sent [~~mailed~~] to defendant's or, if defendant has legal representation, to defense counsel's last known address, and that notwithstanding such notice, defendant failed to appear, defendant's right to a hearing on the merits is waived. A rebuttable presumption that proper notice was given to defendant may be established by the introduction of a notice of hearing dated not less than 11 days prior to the hearing date and addressed to defendant's or defense counsel's last known address, as reflected on defendant's notice of suspension, request for hearing, driving record or similar documentation presented by DPS. Under those circumstances, the judge will proceed in defendant's absence and enter a default order upon DPS's motion.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §354.1039

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1039, concerning Home Health Services Benefits and Limitations.

BACKGROUND AND JUSTIFICATION

Currently, §354.1039 requires that a prior authorization request for repairs of durable medical equipment (DME) or appliances must include a statement or medical information from the attending physician substantiating that the medical appliance or equipment continues to serve a specific medical purpose and an itemized estimated cost list of the repairs.

The requirement for a statement from the attending physician is administratively burdensome on DME providers requesting prior authorization for the repair of a DME or appliance. In addition, it is not required by federal law. Therefore, HHSC proposes to remove this requirement.

SECTION-BY-SECTION SUMMARY

Proposed §354.1039(a)(4)(B)(iii)(I) removes the requirement that a request for repair of DME or appliances include a statement or medical information from the attending physician substantiating that the medical appliance or equipment continues to serve a specific medical purpose.

Other changes are made throughout the rule to correctly reference HHSC, correct punctuation and capitalization errors, and make other nonsubstantive changes for accuracy and readability.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no impact to costs and revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rule. The proposal removes an administrative burden on providers; therefore, no small business or micro-business will be required to change current business practices to their detriment.

PUBLIC BENEFIT AND COST

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be that DME repair will be easier to obtain.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Kristie Kloss, Medical Benefits Policy Manager, 4900 North Lamar Boulevard, Mail Code H600, Austin, Texas 78751-2316; by fax to (512) 730-7472; or by e-mail to *kristie.kloss@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

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

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

§354.1039. Home Health Services Benefits and Limitations.

(a) The Health and Human Services Commission or its designee (HHSC) [~~State~~] determines authorization requirements and limitations for covered home health service benefits. The home health agency is responsible for obtaining prior authorization where specified for the healthcare service, supply, equipment, or appliance. Home health service benefits include the following:

(1) Skilled nursing. Nursing services provided by a registered nurse (RN) or [~~who is currently licensed by the Board of Nurse Examiners for the State of Texas and/or a~~] licensed vocational nurse (LVN) licensed by the Texas Board of Nursing [~~Vocational Nurse Examiners~~] provided on a part-time or intermittent basis and furnished through an enrolled home health agency are covered benefits. Billable nursing visits may also include:

(A) nursing visits required to teach the recipient, the primary caregiver, a family member and/or neighbor how to administer or assist in a service or activity that [~~which~~] is necessary to the care and/or treatment of the recipient in a home setting;

(B) RN visits for skilled nursing observation, assessment, and evaluation, provided a physician specifically requests that a nurse visit the recipient for this purpose.

(i) The physician's request must reflect the need for the assessment visit.

(ii) Nursing visits for the primary purpose of assessing a recipient's care needs to develop a plan of care are considered administrative and are not billable; and

(C) RN visits for general supervision of nursing care provided by a home health aide and/or others over whom the RN is administratively or professionally responsible.

(2) Home health aide services. Home health aide services to provide personal care under the supervision of an RN, a licensed physical therapist (PT), or an occupational therapist (OT) employed by the home health agency are covered benefits.

(A) The primary purpose of a home health aide visit must be to provide personal care services.

(B) Duties of a home health aide include the performance of simple procedures such as personal care, ambulation, exercise, range of motion, safe transfer, positioning, and household services essential to health care at home;[~~,~~] assistance with medications that are ordinarily self-administered;[~~,~~] reporting changes in the patient's condition and needs;[~~,~~] and completing appropriate records.

(C) Written instructions for home health aide services must be prepared by an RN or therapist as appropriate.

(D) The requirements for home health aide supervision are as follows.

(i) When only home health aide services are being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least once every 60 days. These supervisory visits must occur when the aide is furnishing patient care.

(ii) When skilled nursing care, PT, or OT are also being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least every two weeks.

(iii) When only PT or OT is furnished in addition to the home health aide services, the appropriate skilled therapist may make the supervisory visits in place of an RN.

(E) Visits made primarily for performing housekeeping services are not covered services.

(3) Medical supplies. Medical supplies are covered benefits if they meet the following criteria.

(A) Medical supplies must be:

(i) documented in the recipient's plan of care as medically necessary and used for medical or therapeutic purposes;

(ii) supplied:

(I) through an enrolled home health agency in compliance with the recipient's plan of care; or

(II) [~~(iii)~~] [~~supplied~~] by an enrolled medical supplier under written, signed, and dated physician's prescription; and

(iii) [~~(iv)~~] prior authorized unless otherwise specified by HHSC [~~the department~~].

(B) Items which are not listed in subparagraph (C) of this paragraph may be medically necessary for the treatment or therapy of qualified recipients. If a prior authorization request is received for these items, consideration will be given to the request. Approval for reasonable amounts of the requested items may be given if circumstances justify the exception and the need is documented.

(C) Covered items include[~~, but are not limited to~~]:

(i) colostomy and ileostomy care supplies;

(ii) urinary catheters, appliances and related supplies;

(iii) pressure pads including elbow and heel protectors;

(iv) incontinent supplies to include incontinent pads or diapers for clients over the age of four for medical necessity as determined by the physician;

(v) crutch and cane tips;

(vi) irrigation sets;

(vii) supports and abdominal binders (not to include braces, orthotics, or prosthetics);

(viii) medicine chest supplies not requiring a prescription (not to include vitamins or personal care items such as soap or shampoos);

(ix) syringes, needles, IV tubing and/or IV administration setups including IV solutions generally used for hydration or prescriptive additives;

(x) dressing supplies;

(xi) thermometers;

(xii) suction catheters;

(xiii) oxygen and related respiratory care supplies; or

(xiv) feeding related supplies.

(4) Durable medical equipment (DME). Durable Medical Equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) DME must:

(i) be medically necessary and the appropriateness of the health care service, supply, equipment, or appliance prescribed by the physician for the treatment of the individual recipient and delivered in his place of residence must be documented in the plan of care and/or the request form;[.]

(ii) be prior authorized unless otherwise specified by HHSC [~~the department~~];

(iii) meet the recipient's existing medical and treatment needs;

(iv) be considered safe for use in the home; and

(v) be provided through an:

(I) enrolled home health agency under a current physician's plan of care; or

(II) [~~(vi)~~] [~~be provided through an~~] enrolled DME supplier under a written, signed, and dated physician's prescription.

(B) HHSC [~~The department~~] will determine whether DME will be rented, purchased, or repaired based upon the duration and use needs of the recipient.

(i) Periodic rental payments are made only for the lesser of:

(I) the period of time the equipment is medically necessary; or

(II) when the total monthly rental payments equal the reasonable purchase cost for the equipment.

(ii) Purchase is justified when the estimated duration of need multiplied by the rental payments would exceed the reasonable purchase cost of the equipment or it is otherwise more practical to purchase the equipment.

(iii) Repair of durable medical equipment and appliances will be considered based on the age of the item and the cost to repair the item.

(I) A request for repair of durable medical equipment or appliances must include [~~a statement or medical information from the attending physician substantiating that the medical appliance or equipment continues to serve a specific medical purpose and~~] an itemized estimated cost list of the repairs. Rental equipment may be provided to replace purchased medical equipment or appliances for the period of time it will take to make necessary repairs to purchased medical equipment or appliances.

(II) Repairs will not be authorized in situations where the equipment has been abused or neglected by the patient, patient's family, or caregiver.

(III) Routine maintenance of rental equipment is the responsibility of the provider.

(C) Covered medical appliances and equipment (rental, purchase, or repairs) include[~~, but are not limited to~~]:

(i) manual or powered wheelchairs;

(I) non-customized including medically justified seating, supports, and equipment; or

(II) customized, specifically tailored or individualized, powered wheelchairs including appropriate medically justified seating, supports and equipment not to exceed an amount specified by HHSC [~~the department~~].

(ii) canes, crutches, walkers, and trapeze bars;

(iii) bed pans, urinals, bedside commode chairs, elevated commode seats, bath chairs/benches/seats;

(iv) electric and non-electric hospital beds and mattresses;

(v) air flotation or air pressure mattresses and cushions;

(vi) bed side rails and bed trays;

(vii) reasonable and appropriate appliances for measuring blood pressure and blood glucose suitable to the recipient's medical situation to include replacement parts and supplies;

(viii) lifts for assisting recipient to ambulate within residence;

(ix) pumps for feeding tubes and IV administration; and

(x) respiratory or oxygen related equipment.

(D) Medical equipment or appliances not listed in subparagraph (C) of this paragraph may, in exceptional circumstances, be considered for payment when it can be medically substantiated as a part of the treatment plan that such service would serve a specific medical purpose on an individual case basis.

(5) Physical therapy. To be payable as a home health benefit, physical therapy services must:

(A) be provided by a physical therapist who is currently licensed by the Texas Board of Physical Therapy Examiners, or physical therapist assistant who is licensed by the Texas Board of Physical Therapy Examiners who assists and is supervised by a licensed physical therapist;

(B) be for the treatment of an acute musculoskeletal or neuromuscular condition or an acute exacerbation of a chronic musculoskeletal or neuromuscular condition;

(C) be expected to improve the patient's condition in a reasonable and generally predictable period of time, based on the physician's assessment of the patient's restorative potential after any needed consultation with the therapist; and

(D) not be provided when the patient has reached the maximum level of improvement. Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit. Services related to activities for the general good and welfare of patients such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not reimbursable.

(6) Occupational therapy. To be payable as a home health benefit, occupational therapy services must be:

(A) provided by one who is currently registered and licensed by the Texas Board of Occupational Therapy Examiners or by an occupational therapist assistant who is licensed to assist in the practice of occupational therapy and is supervised by an occupational therapist;

(B) for the evaluation and function-oriented treatment of individuals whose ability to function in life roles is impaired by recent or current physical illness, injury or condition; and

(C) specific goal directed activities to achieve a functional level of mobility and communication and to prevent further dysfunction within a reasonable length of time based on the therapist's evaluation and physician's assessment and plan of care.

(7) Insulin syringes and needles. Insulin syringes and needles must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Pharmacies enrolled in the Medicaid Vendor Drug Program may dispense insulin syringes and needles to eligible Medicaid recipients with a physician's prescription.

(B) Prior authorization is not required for an eligible recipient to obtain insulin syringes and needles.

(C) Insulin syringes and needles obtained in accordance with this section will be reimbursed through the Medicaid Vendor Drug Program.

(D) A physician's plan of care is not required for an eligible recipient to obtain insulin syringes and needles under this section.

(8) Diabetic supplies and related testing equipment. Diabetic supplies and related testing equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Diabetic [~~diabetic~~] supplies and related testing equipment must be prescribed by a physician.[~~:~~]

(B) Prior [~~prior~~] authorization is required unless otherwise specified by HHSC. [~~the department; and~~]

(b) Home health service limitations include the following.

(1) Patient supervision.

(A) Patients must be seen by their physician within 30 days prior to the start of home health services. This physician visit may be waived when a diagnosis has already been established by the attending physician and the patient is currently undergoing active medical care and treatment. Such a waiver is based on the physician's statement that an additional evaluation visit is not medically necessary.

(B) Patients receiving home health care services must remain under the care and supervision of a physician who reviews and revises the plan of care at least every 60 days or more frequently as the physician determines necessary.

(2) Time limited prior authorizations.

(A) Prior authorizations for payment of home health services may be issued by HHSC [~~the department~~] for a service period not to exceed 60 days on any given authorization. Specific authorizations may be limited to a time period less than the established maximum. When the need for home health services exceeds 60 days, or when there is a change in the service plan, the provider must obtain prior approval and retain the physician's signed and dated orders with the revised plan of care.

(B) The provider shall be notified by HHSC [~~the department~~] in writing of the authorization (or denial) of requested services.

(C) Prior authorization requests for covered Medicaid home health services must include the following information:

(i) The Medicaid identification form with the following information:

(I) full name, age, and address;

(II) Medical Assistance Program Identification number;

(III) health insurance claim number (where applicable); and

(IV) Medicare number;

(ii) the physician's written, signed, and dated plan of care (submitted by the provider if requested);

(iii) the clinical record data (completed and submitted by provider if requested);

(iv) a description of the home or living environment;

(v) a composition of the family/caregiver;

(vi) observations pertinent to the overall plan of care in the home; and

(vii) the type of service the patient is receiving from other community or state agencies.

(D) If inadequate or incomplete information is provided, the provider will be requested to furnish additional documentation as required to make a decision on the request.

(3) Medication administration. Nursing visits for the purpose of administering medications are not covered if:

(A) the medication is not considered medically necessary to the treatment of the individual's illness;

(B) the administration of medication exceeds the therapeutic frequency or duration by accepted standards of medical practice;

(C) there is not a medical reason prohibiting the administration of the medication by mouth; or

(D) the patient, a primary caregiver, a family member, and/or a neighbor has been taught or can be taught to administer intramuscular (IM) and intravenous (IV) injections.

(4) Prior approval. Services or supplies furnished without prior approval, unless otherwise specified by HHSC [~~the department~~], are not benefits.

(5) Recipient residence. Services, equipment, or supplies furnished to a recipient who is a resident or patient in a hospital, skilled nursing facility, or intermediate care facility are not benefits.

(c) Home health services are subject to utilization review, which includes the following:

(1) the physician is responsible for retaining in the client's record a copy of the plan of care and/or a copy of the request form documenting the medical necessity of the health care service, supply, equipment, or appliance and how it meets the recipient's health care needs; [~~and~~]

(2) the home health services provider is responsible for documenting the amount, duration, and scope of services in the recipient's plan of care, the equipment/supply order request, and the client

record based on the physician's orders. This information is subject to retrospective review; and

(3) HHSC [~~the State or its designated contractor~~] may establish random and targeted utilization review processes to ensure the appropriate utilization of home health benefits and to monitor the cost effectiveness of home health services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2016.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER M. MISCELLANEOUS PROGRAMS
DIVISION 3. COMPREHENSIVE REHABILITATION SERVICES FOR INDIVIDUALS WITH A TRAUMATIC BRAIN INJURY OR TRAUMATIC SPINAL CORD INJURY

1 TAC §355.9040

The Texas Health and Human Services Commission (HHSC) proposes new Division 3, Comprehensive Rehabilitation Services for Individuals with a Traumatic Brain Injury or Traumatic Spinal Cord Injury, and new §355.9040, concerning Reimbursement Methodology for Comprehensive Rehabilitation Services Program, under Subchapter M.

BACKGROUND AND JUSTIFICATION

This rule establishes the reimbursement methodology for the Comprehensive Rehabilitation Services (CRS) program administered by the Texas Department of Assistive and Rehabilitative Services (DARS). HHSC, under its authority and responsibility to administer and implement rates, is proposing this rule to codify the reimbursement methodology for this program, which provides services to individuals with a traumatic brain injury (TBI) or traumatic spinal cord injury (SCI).

The proposed reimbursement methodology describes the method by which HHSC will determine the rates for TBI and SCI Inpatient Comprehensive Medical Rehabilitation Services, TBI and SCI Outpatient Services, Post-Acute Brain Injury (PABI) Residential Services, and PABI and Post-Acute SCI Non-Residential Services.

SECTION-BY-SECTION SUMMARY

Proposed §355.9040(a) describes the payment rate determination methodology for all four categories of service arrays in the CRS program.

Proposed §355.9040(b) makes information in the cost determination process rules applicable to this rule.

Proposed §355.9040(c) authorizes HHSC to require providers to submit cost reports, describes the rules a provider must follow in submitting such reports, and explains the means by which a contracted provider may be excused from submitting a cost report.

FISCAL NOTE

Rebecca Trevino, Chief Financial Officer for DARS, has determined that, during the first five-year period the rule is in effect, there will not be a fiscal impact to state government.

There are no fiscal implications for local governments as a result of enforcing or administering the rule. The rule will not affect a local economy or local employment for the first five years the proposed rule will be in effect.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of the rule. The implementation of the proposed rule does not require any changes in practice or additional cost to a contracted provider, and HHSC anticipates that the new methodology will lead to increased rates for those CRS providers that qualify as small or micro-businesses.

PUBLIC BENEFIT AND COST

Pam McDonald, Director of Rate Analysis for HHSC, has determined that for each of the first five years the rule is in effect, the expected public benefit is that the reimbursement methodology for the CRS program will be documented, consistent, and transparent.

Ms. McDonald does not anticipate that there will be any economic cost to persons who are required to comply with the proposed rule during the first five years the rule will be in effect.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real 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 Andrew Wolfe in the HHSC Rate Analysis Department by telephone at (512) 707-6072. Written comments on the proposed rule may be submitted to Mr. Wolfe by facsimile at (512) 730-7475, by e-mail to *andrew.wolfe@hhsc.state.tx.us,* or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 149030,

Austin, Texas, 78714-9030, within 30 days of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and under §531.0055, which provides the Executive Commissioner with the authority to promulgate rules for the provision of health and human services by the health and human services agencies.

The new rule affects the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.9040. Reimbursement Methodology for Comprehensive Rehabilitation Services Program.

(a) Payment rate determination. Payment rates are determined based on the methodology described for each service array.

(1) Traumatic Brain Injury (TBI) and Spinal Cord Injury (SCI) Inpatient Comprehensive Medical Rehabilitation Services Array. The Texas Department of Assistive and Rehabilitative Services or its successor agency (DARS) negotiates contracts with inpatient facilities to provide services based on data from the Centers for Medicare & Medicaid Services (CMS) Healthcare Cost Report Information System (HCRIS).

(2) TBI and SCI Outpatient Services Array.

(A) For services and purchases for which a specific rate can be established without regard to the individual receiving the service or item, the Texas Health and Human Services Commission (HHSC) will establish Comprehensive Rehabilitation Services (CRS) fee-for-service rates based on a review of rates for similar services as presented in one or more of the following data sources: HHSC fee schedules, previous DARS fee schedules, Medicare fee schedules, other states' Medicaid fee schedules, and/or commercial insurance fee schedules.

(i) Where information on comparable rates is not available, HHSC will establish rates representing best value based on the factors listed in §391.103(2) of this title (relating to Definitions).

(ii) To ensure adequate access to services, DARS medical director, or optometric consultant may approve exceptions to established rates, with review by the HHSC Rate Analysis Department (RAD).

(B) For services and purchases for which a specific rate can be established without regard to the individual receiving the service or item, but for which a CRS rate has not yet been set at the time an individual's program planning team determines that the service is required, HHSC will establish an interim CRS rate.

(i) DARS will contact HHSC RAD to request an interim CRS rate.

(ii) HHSC RAD will determine the interim CRS rate based on the process in subparagraph (A) of this paragraph.

(iii) Claims paid at an interim rate established under this subparagraph will not be adjusted once a rate is formally adopted for that service.

(C) For services and purchases for which the cost of the service or item purchased is specific to the individual receiving the service or item, HHSC will establish a CRS rate at the time of purchase, based on best value, as defined by the reasonable and customary industry standards for each specific service or item purchased.

(3) Post-Acute Brain Injury (PABI) Residential Services Array. DARS will pay providers a per diem rate for each allowable day of PABI Residential Service. DARS will also pay providers for such ancillary services as have been approved in the individual's program plan and received by the individual.

(A) The initial per diem rate is the sum of a base component, which covers room and board, administration, personal assistance, and facility and operations costs; a core service component, which covers core therapy services; and an additional amount for periodic required evaluations.

(i) HHSC determines the base component as follows:

(I) determine the rates for the small and medium classes of facilities in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program as specified in §355.456 of this chapter (relating to Reimbursement Methodology);

(II) adjust the ICF/IID rates to account for the specific needs of the CRS population; and

(III) average the adjusted rates for individuals with limited, extensive, pervasive, and pervasive plus levels of need, weighting by the days of service for those individuals from the most recently reviewed and accepted ICF/IID cost reports.

(ii) HHSC determines the core service component by reviewing the rates or contracted payment amounts for similar services, including the five common core therapy services (Physical Therapy, Occupational Therapy, Speech/Language Therapy, Cognitive Rehabilitation Therapy, and Neuropsychological Therapy) paid by the following payers: HHSC, the Texas Department of Aging and Disability Services (DADS), DARS, Medicare, other states' Medicaid programs, and commercial insurance companies. Based on this review, HHSC determines an appropriate rate per hour that is multiplied by the hours in the tier structure below to determine the rate for each tier. Determination of the applicable tier for a day of service is governed by DARS program standards.

(I) Base - 0 hours.

(II) Base Plus - 0.5 hours.

(III) Tier 1 - 1.5 hours.

(IV) Tier 2 - 2.5 hours.

(V) Tier 3 - 3.5 hours.

(VI) Tier 4 - 4.5 hours.

(VII) Tier 5 - 5.5 hours.

(VIII) Tier 6 - 6.5 hours.

(IX) Tier 7 - 7.5 hours.

(X) Tier 8 - 8.5 hours.

(iii) HHSC determines the additional amount for periodic required evaluations by averaging the common core therapy evaluation rates, multiplying the average by 12, and dividing the product by the number of days in the rate year.

(B) If HHSC determines that adequate cost and services delivery data is available, HHSC may rebase the per diem rate components.

(i) For the base component, if HHSC deems it appropriate to require contracted providers to submit a cost report, HHSC will determine if cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost report-based rate. If such reliable and sufficient data is available,

HHSC may develop a reimbursement rate using that data to replace the initial base component.

(ii) For the core service component, HHSC will collect and evaluate detailed service delivery data. HHSC may rebase the core service component based on the detailed service delivery data.

(C) HHSC determines the ancillary services rates as described in paragraph (2) of this subsection.

(4) PABI and Post-Acute SCI Non-Residential Services Array. HHSC will set separate base rates for facility-based and community-based services, as described in subparagraph (A) of this paragraph. DARS will pay for each allowable billing increment, as defined by program standards. DARS will also pay for such core and ancillary services as have been approved in the individual's program plan and received by the individual.

(A) Initial rates will consist of an hourly base rate which covers administration, personal assistance, and facility and operations costs.

(i) For providers offering Non-Residential Services in a setting that is also a residential facility or shares space with a residential facility, HHSC determines the initial hourly base rate as follows:

(I) determine the rates for the small and medium classes of facilities in the ICF/IID program as specified in §355.456 of this chapter;

(II) adjust the ICF/IID rates to account for the specific needs of the CRS population and the base services to be provided in a Non-Residential facility-based setting;

(III) average the adjusted rates for individuals with limited, extensive, pervasive and pervasive plus levels of need, weighting by the days of service for those individuals from the most recently reviewed and accepted ICF/IID cost reports; and

(IV) divide the average by eight.

(ii) For providers offering Non-Residential Services in the home of the individual receiving the service or in a community setting not connected or affiliated with a residential setting, HHSC determines the initial hourly base rate as follows:

(I) determine the case management and the other attendant care cost components (also known as the administration and facility cost area) of the habilitation base rate under the Community Living Assistance and Support Services (CLASS) program, as described in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program); and

(II) adjust the rate to account for specific needs of the CRS population and the base services to be provided in a non-residential home or community setting.

(B) If HHSC deems it appropriate to require contracted providers to submit a cost report, HHSC will determine if cost data collected as described in subsection (c) of this section is reliable and sufficient to support development of a cost-report-based rate. If such reliable and sufficient data is available, HHSC may develop cost-report-based rates to replace the initial hourly base rates.

(C) HHSC will determine the rates for core services as described in paragraph (2)(A) of this subsection.

(D) HHSC will determine the rates for ancillary services as described in paragraph (2) of this subsection.

(b) Related information. The information in §355.101 of this chapter (relating to Introduction) and §355.105(g) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) applies to this section.

(c) Reporting of cost. To gather adequate financial and statistical information upon which to base reimbursement, HHSC may require a contracted provider to submit a cost report for any service provided through the CRS program.

(1) Cost Reports. If HHSC requires a provider to submit a cost report, the provider must follow the cost reporting guidelines in §355.105 of this chapter and the guidelines for determining whether a cost is allowable or unallowable in §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs).

(2) Excusal from submission of a cost report. A provider is excused from the requirement to submit a cost report if the provider meets one or more of the conditions in §355.105(b)(4)(D) of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) proposes amendments to §133.27, concerning Application for Temporary License for Engineers Currently Licensed Outside the United States; §133.41, concerning Supplementary Experience Record; and §133.43, concerning Experience Evaluation.

The proposed rule changes to §133.27 would implement a licensing agreement between the Texas Board of Professional Engineers and the Republic of Korea. South Korea (The Republic of Korea) is being added to the existing rule for Temporary Licenses that currently addresses Australia, Canada and Mexico. The agreement was signed on March 10, 2016.

The proposed rule changes to §133.41 and §133.43 would implement process changes related to enhancing engagement of Engineers in Training. These changes would allow a person to demonstrate enhanced competence and readiness for licensure on the license application by including information on the Supplementary Experience Record regarding additional training and participation in professional organizations. The standards for competence will be the same as under the current system, but this addition will allow an applicant to present additional accomplishments.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to *rules@engineers.texas.gov.*

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.27

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

§133.27. Application for Temporary License for Engineers Currently Licensed Outside the United States.

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

(1) are citizens of Australia, Canada, the Republic of Korea or the United Mexican States;

(2) are seeking to perform engineering work in Texas for three years or less;

(3) are currently licensed or registered in good standing with Engineers Australia, [~~or~~] at least one of the jurisdictions of Canada, the Korean Professional Engineers Association or the United Mexican States; and

(4) meet the following experience requirements:

(A) Applicant currently registered in Australia, [~~or~~] Canada or the Republic of Korea shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered or chartered engineer with Engineers Australia, the Korean Professional Engineers Association or Engineers Canada and one of which must be working with or show familiarity with U.S. codes, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) The applicant applying for a temporary license from Australia, Canada, the Republic of Korea or the United Mexican States shall submit:

(1) an application in a format prescribed by the board;

(2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(3) a supplementary experience record as required under §133.41(1) - (4) of this chapter (relating to Supplementary Experience Record) or a verified curriculum vitae and continuing professional development record;

(4) at least three reference statements as required under §133.51 and §133.53 of this chapter (relating to Reference Providers and Reference Statements);

(5) passing score of TOEFL as described in §133.21(c) of this chapter (relating to Application for Standard License);

(6) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) documentation of submittal of fingerprints for criminal history record check as required by §1001.3035 of the Act;

(8) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges;

(9) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(10) pay the application fee established by the board; and

(11) a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(3) of this section.

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 31, 2016.

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Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723

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SUBCHAPTER E. EXPERIENCE

22 TAC §133.41, §133.43

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

§133.41. Supplementary Experience Record.

Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure. The NCEES record experience information may be accepted as all or part of a supplementary experience record.

(1) The supplementary experience record shall be written by the applicant and shall:

(A) provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(B) clearly describe the engineering work that the applicant personally performed; [~~and~~]

(C) delineate the role of the applicant in any group engineering activity; and[~~.~~]

(D) include any relevant training or participation in engineering organizations or societies that contribute to the applicant's competence and readiness for licensure (consistent with the requirements listed in §137.17 of this title (relating to Continuing Education Program)).

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

§133.43. Experience Evaluation.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record or the NCEES record experience information and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) (No change.)

(2) In the review of engineering experience, the board may consider additional elements including:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the experience was gained in accordance with the provisions of the Act;

(D) whether the experience was gained in one dominant branch;

(E) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice;

(F) whether short engagements have had an impact upon professional growth; [~~and~~]

(G) whether the applicant intends to practice or offer engineering services in Texas; and[~~.~~]

(H) whether the experience was supplemented by training courses or participation in engineering organizations or societies that contribute to the applicant's competence and readiness for licensure (consistent with the requirements listed in §137.17 of this title (relating to Continuing Education Program)).

(3) (No change.)

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Board of Professional Engineers
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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4 to set fees for license renewal of active Optometric Glaucoma Specialists. The addition to the fee will fund the agency's contribution to the costs of the Prescription Monitoring Program as set out in Senate Bill 195, Regular Session, 84th Legislature.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, the Optometry Board will collect an additional $21,815.15 each year, which will be transferred to the Texas State Board of Pharmacy. There will be no fiscal implications for local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Prescription Monitoring Program, which monitors overprescribing of controlled substances, will be adequately funded.

It is anticipated that there will be no economic costs for many of the licensees required to comply with the rule because Senate Bill 195 removes the requirement for state registration in order to administer or prescribe controlled substances. Many of the licensees affected by this amendment annually renewed the stated controlled substances registration, which has a higher annual renewal fee than the increase in the license renewal fee in this amendment. For those licensees with an Optometric Glaucoma Specialist license who do not have a state controlled substances registration, the costs will be a $7.85 increase to the license renewal fee during fiscal year 2017 and thereafter.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these

practices meet the definition of a micro business. The agency does not license these practices.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.152, and Senate Bill 195, Regular Session, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.152 as authorizing the agency to set license renewal fees, and Senate Bill 195, Regular Session, 84th Legislature, as authorizing the agency to increase renewal fees to fund the Prescription Monitoring Program.

§273.4. Fees (Not Refundable).

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

(g) License Renewal.[:]

(1) Optometrist and Therapeutic Optometrist: $208.00 plus $1.00 fee required by House Bill 2985, 78th Legislature. Total fees: $209.00. The license renewal fee includes $10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(2) Optometric Glaucoma Specialist: $208.00 plus $1.00 fee required by House Bill 2985, 78th Legislature and $7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: $216.85 active renewal; $209.00 inactive renewal. The license renewal fee includes $10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late.[:]

(1) Optometrist and Therapeutic Optometrist: $312.00 plus $1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: $313.00.

(2) Optometric Glaucoma Specialist: $312.00 plus $1.00 fee required by House Bill 2985, 78th Legislature and $7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: $320.85 active renewal; $313.00 inactive renewal.

(i) License fee for late renewal, 90 days to one year late.[:]

(1) Optometrist and Therapeutic Optometrist: $416.00 plus $1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: $417.00.

(2) Optometric Glaucoma Specialist: $416.00 plus $1.00 fee required by House Bill 2985, 78th Legislature and $7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: $424.85 active renewal; $417.00 inactive renewal.

(j) - (n) (No change.)

(o) Retired License.

(1) Optometrist and Therapeutic Optometrist: $208.00 plus $1.00 fee required by House Bill 2985, 78th Legislature. Total fee: $209.00.

(2) Optometric Glaucoma Specialist: $208.00 plus, $1.00 fee required by House Bill 2985, 78th Legislature and $7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. Total fee: $216.85.

(p) - (q) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2016.

TRD-201602807
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 305-8500

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §102.3

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §102.3, concerning the distribution of tobacco settlement proceeds to political subdivisions.

BACKGROUND AND PURPOSE

The rule amendments provide updated language and offer clarification to enhance the understanding of the program rules for the distribution of tobacco settlement proceeds to political subdivisions. The rules are still needed due to the continued responsibilities for implementing the Health and Safety Code, §§12.131 - 12.139, and the responsibilities of the department under the "Agreement Regarding Disposition of Tobacco Settlement Proceeds" filed on July 24, 1998, in United States District Court,

Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co.,* et al., No. 5-96CV-91.

Government Code, §2001.039, requires each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 102.1 - 102.5 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 102.3(b)(2) was amended to give political subdivisions additional examples of expenditures that may not be counted as unreimbursed health care expenditures. Political subdivisions have frequently contacted the department regarding the proposed additional examples.

The amendment to §102.3(b)(2)(B) adds "printers and copiers" as additional examples of administrative equipment not directly related to the provision of health care services to the general public.

The amendment to §102.3(b)(2)(D) adds "rabies control" as an additional example of environmental services that may not be counted.

The amendment to §102.3(b)(2)(F) adds "time spent transporting inmates" as an example of a court procedure.

In §102.3(b)(2)(J), the word "and" was moved to the end of new subparagraph (L) because the list of examples was expanded.

The amendment to §102.3(b)(2)(K) adds "autopsies, burials, and mortician services" as new items not directly related to the provision of health care services to the general public.

The amendment to §102.3(b)(2)(L) adds "meal donation programs" as a new item not directly related to the provision of health care services to the general public.

In §102.3(b)(2), subparagraph (K) was amended to subparagraph (M) to accommodate new subparagraphs (K) and (L).

Section 102.3(f)(1) was amended to give political subdivisions consistent deadlines for submitting annual expenditure statements to the department.

The amendment to §102.3(f)(1)(A) changes the deadline for submitting annual expenditure statements by delivery, fax, or electronic mail from 5:00 p.m. to 11:59 p.m. on March 31 to accommodate electronic delivery of expenditure statements after regular business hours.

The amendment to §102.3(f)(1)(B) changes the deadline for postmarks of annual expenditure statements submitted by U.S. Postal Service or commercial mail carrier from midnight to 11:59 p.m. on March 31 to conform with the proposed new deadline in §102.3(f)(1)(A).

FISCAL NOTE

Elaine McHard, Manager, Funds Coordination and Management Branch, has determined that for each year of the first five years that the section will be in effect there will not be fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McHard has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

Eligible political subdivisions may receive a pro rata share of the annual distribution based on their unreimbursed health care expenditures in the previous calendar year as agreed under the Agreement Regarding Disposition of Tobacco Settlement Proceeds and defined in Health and Safety Code, §§12.131 - 12.139. The amount distributed is determined by the State Comptroller.

PUBLIC BENEFIT

In addition, Ms. McHard has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated is a clear understanding of the distribution of the tobacco proceeds. Also, there is additional information for the public regarding the disbursements of the funds.

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. The proposed amendment does not have the specific intent of protecting the environment or reducing risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Elaine McHard, Funds Coordination and Management Branch, Mail Code 4501, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-6789 or by email to *Elaine.McHard@dshs.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.* Health and Safety Code, §12.138, states that rules must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. These rules were approved by the Tobacco Settlement Permanent Trust Account Administration Advisory Committee on November 5, 2015.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed

by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized under Health and Safety Code, §12.133, which requires the department to adopt rules governing the collection of information that relates to the political subdivisions' unreimbursed health care expenditures; and Government Code, §531.0055, and Health and Safety Code, §1001.75, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039 and Health and Safety Code, §12.139.

The amendment affects the Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§102.3. Annual Claims.

(a) (No change.)

(b) Counties not wholly within a hospital district. For a county not wholly within a hospital district, the agreement further states that unreimbursed expenditures are to be calculated as "all unreimbursed amounts, including unreimbursed jail health care, expended by such county for health care services to the general public during that year, plus 15% of that total."

(1) (No change.)

(2) The following are examples for which expenditures may not be counted:

(A) (No change.)

(B) administrative supplies or equipment not directly related to the provision of health care services to the general public, such as computer paper, printers and copier machines;

(C) (No change.)

(D) environmental services such as mosquito control, water testing, [~~and~~] septic tank inspection, and rabies control;

(E) (No change.)

(F) time spent transporting inmates to and from court procedures, such as continued mental health commitments and medication hearings;

(G) - (I) (No change.)

(J) first responder services; [~~and~~]

(K) autopsies, burials, and mortician services;

(L) meal donation programs; and

(M) [~~(K)~~] services to the extent to which the county has received reimbursement or funds through federal or state programs including, but not limited to, county indigent health care, tertiary medical care, emergency medical services grants, permanent fund for children and public health grants, public health block grants, Title XVIII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid), or crime victims compensation fund.

(3) (No change.)

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

(f) Procedures.

(1) A political subdivision must submit a signed annual expenditure statement to the department, documenting its eligible expenditures for the preceding calendar year:

(A) by delivery, fax, or electronic mail received by the department no later than 11:59 [~~5:00~~] p.m. on March 31 of each year; or

(B) by U.S. Postal Service mail or commercial mail carrier with a postmark reflecting a date no later than 11:59 p.m. [~~midnight~~] on March 31 of each year. Private metered postmarks shall not be acceptable as proof of timely mailing.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2016.

TRD-201602857
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 776-6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.286

The Comptroller of Public Accounts proposes amendments to §3.286, concerning seller's and purchaser's responsibilities, including nexus, permits, returns and reporting periods, and collection and exemption rules. The amendments implement statutory changes enacted in 2015 by the 84th Legislature and clarify agency policy regarding direct payment permit holders and prepayment discounts. House Bill 2358, 84th Legislature, 2015, added Tax Code, §151.0241 (Persons Performing Disaster- or Emergency-Related Work).

A new defined term is added to subsection (a) to implement House Bill 2358, 84th Legislature, 2015. New subsection (a)(3) is added to define the term "disaster- or emergency-related work." This definition is taken from Business & Commerce Code, §112.003, and incorporates the definitions of the terms "critical infrastructure" and "disaster- or emergency-related work." Subsequent paragraphs are renumbered accordingly. In addition, renumbered subsection (a)(4), defining the term "engaged in business," is amended to add new subparagraph (J) to implement House Bill 2358. New subparagraph (J) provides that certain out-of-state business entities who come to Texas for the sole purpose of repairing or replacing critical infrastructure damaged in a disaster or emergency are not engaged in business in this state. This provision is effective June 16, 2015.

Subsection (c)(1), relating to obtaining a sales and use tax permit, is amended to implement Senate Bill 853, 84th Legislature, 2015, which provides that a sales tax permit application filed electronically on a form prescribed by the comptroller is deemed to be signed by the applicant for purposes of Tax Code, §151.202(b)(5).

Subsection (d)(2)(B) is amended to reinstate the requirement that out-of-state sellers identify the tax on their bills or invoices as Texas tax. The following sentence was first added to the section in 1988: "Out-of-state sellers must identify the tax as Texas sales or use tax." See 13 TexReg 3988 (1988). During the drafting of the amendments to the section that were adopted effective June 3, 2015, the sentence was inadvertently deleted. Because the deletion was inadvertent, it was not explained or addressed in the preamble to the 2015 amendment. See 40 TexReg 3183 (2015) (addressing revisions to subsection (d)(2)(A) but not subsection (d)(2)(B)). The language is revised to describe out-of-state sellers as sellers who do not maintain a physical location in Texas.

Subsection (d)(2)(B) is further amended to memorialize current comptroller procedure that when an invoice or bill does not identify tax as Texas tax, it is presumed that the seller did not collect Texas tax. The subsection further explains that the presumption is rebuttable.

Subsection (f)(3), relating to extensions for persons located in a disaster area, is amended to use terminology consistent with House Bill 2358 and amended subsection (a). For example, the term "natural disaster area" is replaced with the phrase "an area designated in a state of disaster or emergency declaration."

Subsection (g)(8), relating to direct payment permit holders, is also revised. This subsection states that "prepayment procedures and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits." Because subsection (h) addresses discounts for timely filing and for prepayment, subsection (g)(8) is amended to replace the phrase "prepayment procedures" with the more accurate phrase "prepayment discounts."

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah 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 by conforming the rule to current statutes and clarifying agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §151.0241 ("Persons Performing Disaster Or Emergency-Related Work") and Business & Commerce Code, Chapter 112 et seq.

§3.286. Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules.

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

(1) Consignment sale--The sale, lease, or rental of tangible personal property by a seller who, under an agreement with another person, is entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest, and is authorized to sell, lease, or rent the tangible personal property without additional action by the person having title to or another ownership interest in the tangible personal property.

(2) Direct sales organization--A person that typically sells taxable items directly to purchasers through independent salespersons and not in or through a place of business. The term "independent salespersons" includes, but is not limited to, distributors, representatives, and consultants. Items are typically sold person-to-person through in-home product demonstrations, parties, catalogs, and one-on-one selling. The term includes, but is not limited to, direct marketing and multilevel marketing organizations.

(3) Disaster- or emergency-related work--Repairing, renovating, installing, building, rendering services, or performing other business activities relating to the repair or replacement of equipment and property, including buildings, offices, structures, lines, poles, and pipes, that:

(A) is owned or used by or for:

(i) a telecommunications provider or cable operator;

(ii) communications networks;

(iii) electric generation;

(iv) electric transmissions and distribution systems;

(v) natural gas and natural gas liquids gathering, processing, and storage, transmission and distribution systems; or

(vi) water pipelines and related support facilities, equipment, and property that serve multiple persons; and

(B) is damaged, impaired, or destroyed by a declared state disaster or emergency.

(4) [~~(3)~~] Engaged in business--A seller is engaged in business in this state if the seller:

(A) maintains, occupies, or uses in this state, permanently or temporarily, directly or indirectly, or through an agent by whatever name called, a kiosk, office, distribution center, sales or sample room or place, warehouse or storage place, or any other physical location where business is conducted;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates under the authority of the seller to conduct business in this state, including selling, delivering, or taking orders for taxable items;

(C) promotes a flea market, arts and crafts show, trade day, festival, or other event in this state that involves sales of taxable items;

(D) uses independent salespersons, who may include, but are not limited to, distributors, representatives, or consultants, in this state to make direct sales of taxable items;

(E) derives receipts from the sale, lease, or rental of tangible personal property that is located in this state or owns or uses tangible personal property that is located in this state, including a computer server or software to solicit orders for taxable items, unless the seller uses the server or software as a purchaser of an Internet hosting service;

(F) allows a franchisee or licensee to operate under its trade name in this state if the franchisee or licensee is required to collect sales or use tax in this state;

(G) otherwise conducts business in this state through employees, agents, or independent contractors;

(H) is formed, organized, or incorporated under the laws of this state and the seller's internal affairs are governed by the laws of this state, notwithstanding the fact that the seller may not be otherwise engaged in business in this state pursuant to this section; or

(I) holds a substantial ownership interest in, or is owned in whole or substantial part by, another person who:

(i) maintains a distribution center, warehouse, or similar location in this state and delivers property sold by the seller to purchasers in this state;

(ii) maintains a location in this state from which business is conducted, sells the same or substantially similar lines of products as the seller, and sells such products under a business name that is the same or substantially similar to the business name of the seller; or

(iii) maintains a location in this state from which business is conducted if the person with the location in this state uses its facilities or employees:

(I) to advertise, promote, or facilitate sales by the seller to purchasers; or

(II) to otherwise perform any activity on behalf of the seller that is intended to establish or maintain a marketplace for the seller in this state, including receiving or exchanging returned merchandise.

(iv) For purposes of this subparagraph only, "ownership" includes direct ownership, common ownership, or indirect ownership through a parent entity, subsidiary, or affiliate, and "substantial," with respect to ownership, constitutes an interest, whether direct or indirect, of at least 50% of:

(I) the total combined voting power of all classes of stock of a corporation;

(II) the beneficial ownership interest in the voting stock of the corporation;

(III) the current beneficial interest in the corpus or income of a trust;

(IV) the total membership interest of a limited liability company;

(V) the beneficial ownership interest in the membership interest of a limited liability company; or

(VI) the profits or capital interest of any other entity, including, but not limited to, a partnership, joint venture, or association.

(J) Effective June 16, 2015, a seller is not engaged in business in this state if the seller is an out-of-state business entity whose physical presence in this state is solely from the entity's performance of disaster- or emergency-related work during a disaster response period. An out-of-state business entity that remains in this state after a disaster response period has ended is engaged in business in this state if the entity conducts any of the activities described in subparagraphs (A) - (I) of this paragraph.

(i) For purposes of this subparagraph only, an "affiliate" is a member of a combined group as that term is described by Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(ii) For purposes of this subparagraph only, a "disaster response period" is:

(I) the period that:

(-a-) begins on the 10th day before the date of the earliest event establishing a declared state of disaster or emergency by the issuance of an executive order or proclamation by the governor or a declaration of the president of the United States; and

(-b-) ends on the earlier of the 120th day after the start date or the 60th day after the ending date of the disaster or emergency period established by the executive order or proclamation or declaration, or on a later date as determined by an executive order or proclamation by the governor; or

(II) the period that, with respect to an out-of-state business entity:

(-a-) begins on the date that the out-of-state business entity enters this state in good faith under a mutual assistance agreement and in anticipation of a state of disaster or emergency, regardless of whether a state of disaster or emergency is actually declared; and

(-b-) ends on the earlier of the date that the work is concluded or the seventh day after the out-of-state business entity enters this state.

(iii) For purposes of this subparagraph only, a "mutual assistance agreement" is an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating critical infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business entity perform work in this state in anticipation of a state of disaster or emergency.

(iv) For purposes of this subparagraph only, an "out-of-state business entity" is a foreign entity that:

(I) enters this state at the request of, or is an affiliate of, an in-state business entity and performs work in Texas under a mutual assistance agreement; or

(II) enters this state at the request of an in-state business entity, under a mutual assistance agreement, or is an affiliate of an in-state business entity and enters this state at the request of an in-state business entity, the state of Texas, or a political subdivision of this state to perform disaster- or emergency-related work in this state during the disaster response period, and:

(-a-) except with respect to the performance of disaster- or emergency-related work, has no physical presence in this state and is not authorized to transact business in this state immediately before a disaster response period; and

(-b-) is not registered with the secretary of state to transact business in this state, does not file a tax report with this state, or a political subdivision of this state, and does not have a

nexus with this state for the purpose of taxation during the tax year immediately preceding the disaster response period.

(5) [~~(4)~~] Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(6) [~~(5)~~] Itinerant vendor--A seller who does not operate a place of business in this state and who travels to various locations in this state to solicit sales.

(7) [~~(6)~~] Kiosk--A small, stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(8) [~~(7)~~] Nexus--Sufficient contact with or activity within this state, as determined by state and federal law, to require a person to collect and remit sales and use tax. A person does not have nexus in this state if the person has no connection with this state except the possession of a certificate of authority to do business in this state issued by the Texas Secretary of State.

(9) [~~(8)~~] Permit holder--A person to whom the comptroller has issued a sales and use tax permit. The term includes permitted sellers as well as permitted purchasers, but does not include a person who does not hold a Texas sales and use tax permit or whose sales and use tax permit is suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, or a person who has not received a sales and use tax permit due to an unsigned or incomplete application.

(10) [~~(9)~~] Place of business--This term has the meaning given in §3.334 of this title (relating to Local Sales and Use Taxes).

(11) [~~(10)~~] Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services in this state for consideration. Seller is further defined as follows:

(A) A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless those persons hold active sales and use tax permits that the comptroller has issued.

(B) A direct sales organization that is engaged in business in this state is a seller responsible for the collection and remittance of the sales and use tax collected by the organization's independent salespersons.

(C) Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are sellers responsible for the collection and remittance of sales and use tax on the sale of such tangible personal property.

(D) A person engaged in business in this state who sells, leases, or rents tangible personal property owned by another person by means of a consignment sale is a seller responsible for the collection and remittance of the sales tax on the consignment sale.

(E) An auctioneer who owns tangible personal property or to whom tangible personal property has been consigned is a seller responsible for the collection and remittance of the sales and use tax on tangible personal property sold at auction. For more information, auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(12) [~~(11)~~] Taxable item--Tangible personal property and taxable services. Except as otherwise provided in Tax Code, Chapter 151, the sale or use of a taxable item in electronic form instead of on physical media does not alter the item's tax status.

(A) Tangible personal property means property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, including a computer program as defined in §3.308 of this title (relating to Computers--Hardware, Software, Services, and Sales) and a telephone prepaid calling card, as defined in §3.344 of this title.

(B) Taxable services are those identified in Tax Code, §151.0101.

(b) Who must have a sales and use tax permit.

(1) Sellers. Each seller who is engaged in business in this state, including itinerant vendors, persons who own or operate a kiosk, and sellers operating temporarily in this state, must apply to the comptroller and obtain a sales and use tax permit for each place of business operated in this state.

(2) Out-of-state sellers. Each out-of-state seller who has nexus with this state and is engaged in business in this state must apply to the comptroller and obtain a sales and use tax permit. An out-of-state seller is responsible for the collection and remittance of sales and use tax on all sales of taxable items made in this state until the seller ceases to have nexus with this state. An out-of-state seller ceases to have nexus with this state when the seller no longer has, and no longer intends to engage in activities that would create, nexus with this state. For example, an out-of-state seller who enters the state each year to participate in an annual trade show does not cease to have nexus with this state between one trade show and the next. In contrast, an out-of-state seller who discontinues the product line that it marketed and sold in this state, and who does not anticipate entering the state to solicit new business, has ceased to have nexus with this state. An out-of-state seller is required to maintain, for at least four years after the out-of-state seller ceases to have nexus with this state, all records required by subsection (j) of this section, including sufficient documentation to verify the date on which the out-of-state seller ceased to have nexus with this state. For more information regarding reporting periods, refer to subsection (g) of this section.

(3) Direct sales organizations. Independent salespersons of direct sales organizations are not required to hold sales and use tax permits to sell taxable items for direct sales organizations. Direct sales organizations engaged in business in this state are sellers responsible for holding sales and use tax permits and for the collection and remittance of sales and use tax on all sales of taxable items by their independent salespersons. See subsection (d)(3) of this section for more information about the collection and remittance of sales and use tax by direct sales organizations.

(4) Non-permitted purchasers. Persons who are not required to have a sales and use tax permit or who do not have a direct payment permit are still responsible for paying to the comptroller sales or use tax due on purchases of taxable items from sellers who do not

collect and remit tax. See subsection (g)(9) of this section for return and payment information and §3.346 of this title (relating to Use Tax).

(5) Non-permitted sellers. Failure to obtain a sales and use tax permit does not relieve a seller required by this section or other applicable law to have a sales and use tax permit from the obligation to properly collect and remit sales and use taxes. Sellers whose sales and use tax permits are suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, and sellers who have not received sales and use tax permits due to unsigned or incomplete applications, are still responsible for properly collecting and remitting sales and use taxes. See subsection (g) of this section for return and payment information.

(c) Obtaining a sales and use tax permit.

(1) A seller must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A seller who files an electronic application furnished by the comptroller is deemed to have signed the application and is not required to print and mail a signed application to the comptroller. A separate sales and use tax permit under the same taxpayer account number is issued to the applicant for each place of business. Sales and use tax permits are issued without charge.

(2) Each seller must apply for a sales and use tax permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The sales and use tax permit cannot be transferred from one seller to another. The sales and use tax permit is valid only for the seller to whom it was issued and for the transaction of business only at the address that is shown on the sales and use tax permit. If a seller operates two or more types of business at the same location, then only one sales and use tax permit is required.

(3) The sales and use tax permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling sales persons who operate from a central office needs only one sales and use tax permit, which must be displayed at that office.

(4) All sales and use tax permits of the seller will have the same taxpayer account number; however, each place of business will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations operated by the seller.

(d) Collecting sales and use tax due.

(1) Bracket system.

(A) Each seller must collect sales or use tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053. The practice of rounding off the amount of sales or use tax that is due on the sale of a taxable item is prohibited. Copies of the bracket system should be displayed in each place of business so both the seller and the purchaser may easily use them.

(B) The sales and use tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Sales and use tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410. When sales and use tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the sales and use tax due. Conversely, when the sales and use tax collected under the bracket system is less than the sales and use tax due on the seller's total receipts, the seller is required to remit sales and use tax on the total receipts even though the seller did not collect sales and use tax from the purchasers.

(2) Sales and use tax due is debt of the purchaser; document requirements.

(A) The sales and use tax due is a debt of the purchaser to the seller until collected. Unpaid sales or use tax is recoverable by the seller in the same manner as the original sales price of the taxable item itself, if unpaid, would be recoverable. The comptroller may proceed against either the seller or purchaser, or against both, until all applicable tax, penalty, and interest due has been paid.

(B) The amount of sales and use tax due must be separately stated on the bill, contract, or invoice to the purchaser or there must be a written statement to the purchaser that the stated price includes sales or use tax. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without sales and use tax included. The seller or purchaser may overcome the presumption by using the seller's records to show that sales or use tax was included in the sales price. Sellers located outside of Texas must identify the tax as Texas sales or use tax on their bill, contract, or invoice to the purchaser. If the out-of-state seller does not identify the tax as Texas sales or use tax at the time of the transaction, the seller is presumed not to have collected Texas sales or use tax. Either the seller or the purchaser may overcome the presumption by submitting evidence that clearly demonstrates that the Texas sales or use tax was remitted to the comptroller.

(3) Direct sales organizations. A direct sales organization is responsible for the collection and remittance of the sales and use tax on all sales of taxable items in this state by the independent salespersons who sell the organization's product or service as explained in this paragraph. See subsection (b)(3) of this section for information about sales and use tax permits required to be held by direct sales organizations.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after taking the purchaser's order, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax on the actual sales price for which the independent salesperson sold the taxable item to the purchaser.

(B) If an independent salesperson purchases a taxable item from a direct sales organization before the purchaser's order is taken, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax based on the organization's suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual sales price for which the item was sold to the salesperson at the tax rate in effect for the salesperson's location.

(D) Incentives, including rewards, gifts, and prizes.

(i) Direct sales organizations owe sales and use tax on the cost of all taxable items used as incentives that are transferred to a recipient in this state, including purchasers, independent salespersons, and persons who host a direct sales event.

(ii) Direct sales organizations must collect sales or use tax on the total amount of consideration received in exchange for taxable items, including items purchased with hostess points or similar

forms of compensation paid to a person for hosting a direct sales event and items that are earned by the host based on the volume of purchases. The redemption of reward points in exchange for taxable items is subject to sales tax under Tax Code, §151.005(2). See also §3.283 of this title (relating to Bartering Clubs and Exchanges).

(4) Printers. A printer is a seller of printed materials and is required to collect sales and use tax on sales of those materials in this state. A printer who is engaged in business in this state, however, is not required to collect the sales and use tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both inside and outside of this state; and

(C) the purchaser issues a properly completed exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to this state all the sales and use taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (g)(4) of this section for additional reporting requirements.

(5) Fundraisers by exempt entities. Regardless of the contractual terms between a for-profit entity and a non-profit exempt entity relating to the sale of taxable items, other than amusement services, as part of any fundraiser, the for-profit entity will be considered the seller of the items under Tax Code, §151.024, must be a permit holder, and is responsible for the proper collection and remittance of any sales or use tax due. The exempt entity and its representatives will be considered as representatives of the for-profit entity. The for-profit entity may advertise in a sales catalog or state on each invoice that sales and use tax is included, as provided under paragraph (2) of this subsection, or may require that the sales and use tax be calculated and collected by its representatives based on the sales price of each taxable item. Fundraisers conducted by exempt entities in this manner do not qualify as a tax-free sale day. For more information on exempt entities and tax-free sales days, see §3.322 of this title (relating to Exempt Organizations). For more information on amusement services, see §3.298 of this title (relating to Amusement Services).

(6) Local sales and use tax. A seller who has nexus with this state and is engaged in business in this state is required to properly collect and remit local sales and use tax even if no sales and use tax permit is required at the location where taxable items are sold. For more information on the proper collection of local taxes, see §3.334 of this title.

(e) Sales and use tax returns and remitting tax due.

(1) Forms prescribed by the comptroller. Sales and use tax returns must be filed on forms that the comptroller prescribes. The fact that a person does not receive or obtain the correct forms from the comptroller does not relieve a person of the responsibility to file a sales and use tax return and to remit the required sales and use tax.

(2) Signatures. Sales and use tax returns must be signed by the person who is required to file the sales and use tax return or by the person's duly authorized agent, but need not be verified by oath.

(3) Permit holders.

(A) Each permit holder is required to file a sales and use tax return for each reporting period, even if the permit holder has no sales or use tax to report for the reporting period.

(B) Each permit holder must remit sales and use tax on all receipts from sales or purchases of nonexempt taxable items, less any applicable discounts as provided by subsection (h) of this section.

(C) Each permit holder shall file a single sales and use tax return together with the tax payment for all businesses that operate under the same taxpayer number. The sales and use tax return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet.

(D) Consolidated reporting by affiliated entities is not allowed. Each legal entity engaged in business in this state is responsible for filing a separate sales and use tax return.

(4) Electronic returns and remittances. Certain persons must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For more information, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(f) Due dates.

(1) General rule. Sales and use tax returns and remittances are due no later than the 20th day of the month following each reporting period end date unless otherwise provided by this section. Sales and use tax returns and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(A) Sales and use tax returns submitted by mail must be postmarked on or before the due date to be considered timely.

(B) Sales and use tax returns filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(2) Due dates for payments made using an electronic funds transfer method approved by the comptroller are provided at §3.9(c) of this title.

(3) Extensions for persons located in an [~~a natural disaster~~] area designated in a state of disaster or state of emergency declaration. The comptroller may grant an extension of not more than 90 days to make or file a sales and use tax return or pay sales and use tax that is due by a person located in an [~~a natural disaster~~] area designated in an executive order or proclamation issued by the governor declaring a state of disaster or state of emergency, or an area that the president of the United States declares a major disaster or emergency, if [~~whom~~] the comptroller finds the person to be a victim of the [~~natural~~] disaster or emergency. The person owing the sales and use tax may file a written request for an extension at any time before the expiration of 90 days after the original due date. If an extension is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and penalties are assessed and determined as though the last day of the extension were the original due date. [~~The term "natural disaster area" has the meaning given in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).~~]

(g) Reporting periods.

(1) Quarterly filers. Permit holders who have less than $1,500 in state sales and use tax per quarter to report may file sales and use tax returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(2) Yearly filers. Permit holders who have less than $1,000 in state sales and use tax to report during a calendar year may file yearly sales and use tax returns upon authorization from the comptroller.

(A) Authorization to file sales and use tax returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file sales and use tax returns on a yearly basis will be denied if a permit holder's liability exceeded $1,000 in the prior calendar year.

(C) A permit holder who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a permit holder's state sales and use tax liability is greater than $1,000 during a calendar year. The permit holder must file a sales and use tax return for that month or quarter, depending on the amount, in which the sales and use tax payment or liability is greater than $1,000. On that return, the permit holder must report all sales and use taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, thereafter for as long as the yearly sales and use tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly sales and use tax returns.

(F) Yearly filers must report on a calendar year basis. The sales and use tax return and payment are due on or before January 20 of the next calendar year.

(3) Monthly filers. Permit holders who have $1,500 or more in state sales and use tax per quarter to report must file monthly sales and use tax returns except for permit holders who prepay the sales and use tax as provided in subsection (h) of this section.

(4) Printers. A printer who is not required to collect sales and use tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(4) of this section must file a quarterly special use tax report, Form 01-157, Texas Special Use Tax Report for Printers, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form, with the comptroller on or before the last day of the month following the quarter. The report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit sales and use taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(4) of this section.

(5) Local sales and use tax. Each permit holder who is required to collect, report, and remit a city, county, special purpose district, or metropolitan transit authority/city transit department sales and use tax must report the amount subject to local sales and use tax on the state sales and use tax return described in subsection (e) of this section.

(6) State agencies. State agencies that deposit sales and use taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate sales and use tax return. A fully completed deposit request voucher is deemed to be the sales and use tax return filed by these agencies. Paragraphs (1) - (3) of this subsection do not apply to these state agencies. Sales and use taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Refunds on exports. Sellers who refund sales tax on exports based on customs broker certifications should refer to §3.360 of this title (relating to Customs Brokers).

(8) Direct payment permit holders. Yearly and quarterly filing requirements, as discussed in this subsection, and prepayment discounts [~~procedures~~] and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(9) Non-permitted purchasers. A person who does not hold a sales and use tax permit or a direct payment permit must pay sales or use tax that is due on purchases of taxable items when the sales or use tax is not collected by the seller. The sales or use tax is to be remitted on comptroller Form 01-156, Occasional Sales and Use Tax Return, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) A non-permitted purchaser who owes less than $1000 in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file the return on or before the 20th of January following the year in which the purchases were made.

(B) A non-permitted purchaser who owes $1000 or more in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file a return and remit sales and use taxes due on or before the 20th of the month following the month when the $1000 threshold is reached and thereafter file monthly returns and make sales and use tax payments on all purchases on which sales and use tax is due.

(h) Discounts; prepayments; penalties and interest relating to filing sales and use tax returns.

(1) Discounts. Unless otherwise provided by this section, each permit holder may claim a discount for timely filing a sales and use tax return and paying the taxes due as reimbursement for the expense of collecting and remitting the sales and use tax. The discount is equal to 0.5% of the amount of sales and use tax due and may be claimed on the return for each reporting period and is computed on the amount timely reported and paid with that return.

(2) Prepayments. Prepayments may be made by permit holders who file monthly or quarterly sales and use tax returns. The amount of the prepayment must be a reasonable estimate of the state and local sales and use tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A permit holder who makes a timely prepayment based upon a reasonable estimate of sales and use tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made.

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the sales and use tax is due.

(D) A permit holder who makes a timely prepayment must file a sales and use tax return showing the actual liability and remit any amount due in excess of the prepayment on or before the 20th day of the month that follows the quarter or month for which a prepayment was made. If there is an additional amount due, the permit holder may retain the 0.5% reimbursement on the additional amount due, provided that both the sales and use tax return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the permit holder will be mailed an overpayment notice or refund warrant.

(E) Remittances that are less than a reasonable estimate, as described by this paragraph, are not regarded as prepayments and the 1.25% discount will not be allowed. If the permit holder owes more

than $1,500 in a calendar quarter, the permit holder is regarded as a monthly filer. All monthly sales and use tax returns that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(3) Penalties and interest.

(A) If a person does not file a sales and use tax return together with payment on or before the due date, the person forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the person, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(B) A person who fails to timely file a sales and use tax return when due shall pay an additional penalty of $50. The penalty is due regardless of whether the person subsequently files the sales and use tax return or whether no taxes are due for the reporting period.

(i) Reports of alcoholic beverage sales to retailers. Each brewer, manufacturer, wholesaler, winery, distributor, or package store local distributor shall electronically file a report of alcoholic beverage sales to retailers, as that term is defined in §3.9(e)(2) of this title, as provided in that section.

(j) Records required for comptroller inspection. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(k) Resale and exemption certificates. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(l) Suspension of sales and use tax permit.

(1) If a permit holder fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the permit holder's sales and use tax permit or permits.

(2) Before a permit holder's sales and use tax permit is suspended, the permit holder is entitled to a hearing before the comptroller to show cause why the permit should not be suspended. The comptroller shall give the permit holder at least 20 days notice, which shall be in accordance with the requirements of §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

(3) After a sales and use tax permit has been suspended, a new permit will not be issued to the same person until the person has posted sufficient security and satisfied the comptroller that the person will comply with both the provisions of the law and the comptroller's rules and regulations.

(m) Refusal to issue sales and use tax permit. The comptroller is required by Tax Code, §111.0046, to refuse to issue any sales and use tax permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(n) Cancellation of sales and use tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales and use tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the sales and use tax permit, and the comptroller may cancel the sales and use tax permit. "No business activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a sales and use tax permit is cancelled, the person may reapply and obtain a new sales and use tax permit upon request, provided the issuance is not prohibited by subsection (m) of this section, or by Tax Code, §111.0046.

(o) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability and Fraudulent Transfers: Liability Incurred by Purchase or Acquisition of a Business).

(p) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title (relating to Criminal Offenses and Penalties).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 31, 2016.

TRD-201602734
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

The Texas Juvenile Justice Department (TJJD) proposes amendments to §§385.8153 (Research Projects), 385.9967 (Court-Ordered Child Support), and 385.9993 (Canteen Operations).

Throughout these sections, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes are listed in the following paragraphs.

SECTION-BY-SECTION SUMMARY

The amended §385.8153 will: 1) add several items to the list of items that must be included with each research proposal submitted by non-TJJD researchers; 2) clarify the meaning of "negative personal results," which is a term used when describing a prohibited type of research; 3) clarify that a copy of the final report must be submitted to TJJD *prior to releasing the report, except as approved by the executive director;* 4) add a new section that describes TJJD's process for approving research projects; 5) add a provision allowing the TJJD board to delegate to the executive director or designee authority to approve research projects; 6) add provisions that explain TJJD's responsibility to monitor research projects, evaluate the results, and recommend any ap-

propriate changes; and 7) add a section that addresses approval of pilot programs.

The amended §385.9967 will: 1) clarify that TJJD *may* (rather than must) notify the committing court when a court-ordered child support payment is past due; 2) remove the deadline for TJJD to make a decision to refer a delinquent account to the Child Support Division of the Attorney General's Office; 3) clarify that when TJJD receives child support for a Title IV-E certified youth, TJJD reduces the amount of its claim for reimbursement by the amount of child support received for that youth; 4) remove the requirement for TJJD to inquire into the Attorney General's system to determine if child support payments are related to an open Title IV-E case and to subsequently forward any child support received for such youth to the Attorney General's Office or Department of Family and Protective Services; and 5) remove the requirement for TJJD to notify the Attorney General's Office of certain information when a youth is certified as Title IV-E eligible.

The amended §385.9993 will: 1) remove the requirement that the Health and Human Services Commission be given the first opportunity to operate a canteen in TJJD residential facilities; 2) add an option to enter a canteen-services contract with an entity other than the local Community Resource Council; and 3) expand the scope of the rule to apply to any vending operation *accessible to youth* (rather than for the benefit of youth) and remove the exemption for vending machines.

Additionally, the amendment to §385.9993 will move several provisions out of TJJD's internal procedures and into the text of the rule, including: 1) requirements to use the Canteen Revolving Fund for any expenditures or revenues associated with operating a canteen; 2) notice that TJJD is not responsible for collecting or depositing sales taxes for canteens operated by contractors; and 3) a provision allowing TJJD employees to assist a contractor in providing canteen services only when doing so does not interfere with employees' regular job duties or the safety of youth and staff.

RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review §§385.8153, 385.9967, and 385.9993 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Mr. Meyer 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 administering the sections will be the availability of rules that have been updated to conform to current laws and regulations and to more accurately reflect TJJD's current organizational structure and practices.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to *policy.proposals@tjjd.texas.gov.*

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §385.8153

STATUTORY AUTHORITY

Amended §385.8153 is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§385.8153. Research Projects.

(a) Purpose. This [~~The purpose of this~~] rule addresses: [~~is to allow for~~]

(1) research related to juvenile delinquency; [~~and to ensure~~]

(2) the assurance of confidentiality by establishing procedures that [~~which~~] comply with state and federal guidelines and laws and accepted professional and scientific ethics; and[~~.~~]

(3) the ability of the Texas Juvenile Justice Department (TJJD) to provide sufficient technical assistance for research projects.

(b) General Provisions. [~~Restrictions.~~]

(1) TJJD encourages [~~The agency will encourage~~] research beneficial to TJJD or the juvenile justice system.

(2) TJJD uses [~~The agency will use~~] research results to aid decision making regarding agency operations and [~~for~~] youth treatment programs.

(3) TJJD collaborates [~~The agency will collaborate~~] with other agencies whenever possible and shares [~~share~~] research information as appropriate and as allowed by law.

(4) Any patentable product, process, or idea that might result from a research project funded by TJJD is [~~the Texas Youth Commission shall be~~] the property of TJJD. [~~the Texas Youth Commission.~~]

(c) Youth Participation. Participation by TJJD [~~TYC~~] youth as research subjects is [~~shall be~~] restricted as follows:

(1) TJJD [~~TYC~~] youth may [~~will~~] not be used in experimental projects involving medical, pharmaceutical, or cosmetic research.

(2) TJJD [~~TYC~~] youth may participate in nonmedical, nonpharmaceutical, or noncosmetic research on a voluntary, noncoercive basis.

(3) TJJD [~~TYC~~] youth who choose [~~elect~~] to participate in research projects are [~~will~~] not: [~~be~~]

(A) denied basic services available to other youth; or[~~, nor~~]

(B) permitted to participate in research activities that are likely to [~~which may~~] accrue negative personal results (e.g., nega-

tive impact to treatment progress, causing emotional distress or physical harm, etc).

(d) Researchers. TJJD [~~TYC~~] staff, university faculty or students, or contracted firms or individuals may[~~, if approved,~~] conduct research if they:

(1) show that the proposed project will provide benefits to TJJD [~~TYC~~] or the juvenile justice profession;

(2) ensure confidentiality of TJJD [~~TYC~~] youth;

(3) do not place an undue burden on TJJD [~~TYC~~] staff, youth, or agency resources; [~~and~~]

(4) agree to comply with other agency rules; and [~~of conduct for research as specified below.~~]

(5) are approved under subsection (h) of this section.

(e) Oversight of Research Projects. The TJJD Research Department is responsible for ensuring research projects are proposed, reviewed, approved, and conducted in accordance with TJJD requirements. [~~Project Management. Procedures for research projects are managed through the research department.~~]

(f) Research Proposals. Project directors other than those employed by the TJJD Research Department [~~research department~~] must submit a research proposal to the Research Department, not to exceed five pages, excluding attachments [~~research department~~]. The proposal must [~~should~~] include [~~as much of~~] the following information, unless otherwise approved by the director of research [~~as possible~~]:

(1) project title;

(2) names and qualifications of all project researchers;

(3) purpose (e.g., thesis, professional paper, dissertation);

(4) executive summary;

(5) research questions and research design;

(6) research methodology including statistical methods/models if applicable;

(7) comprehensive list of data elements/fields requested and how these relate to the research questions;

(8) statement of why juvenile justice data are needed;

(9) statement of how research will benefit TJJD or the juvenile justice system;

(10) amount of TJJD staff time needed to complete the research project, provide technical assistance, or compile data;

(11) number of research subjects and time required by each study subject, if applicable;

(12) time frame of research;

(13) Institutional Review Board (IRB) approval;

(14) copy of study instruments, surveys, etc.;

(15) copy of consent forms;

(16) completed Research and Analytical Testing System (RATS) questionnaire;

(17) provisions for confidentiality of research subjects;

(18) research supervisor, if any (e.g., chairperson of thesis committee);

(19) amount and source of funding, if any; and

(20) any other information requested by the director of research.

[~~(4) research design and methodology;~~]

[~~(5) number of and time required by each TYC youth if used in research;~~]

[~~(6) provisions for confidentiality of youth names and identification numbers;~~]

[~~(7) amount of TYC staff time needed;~~]

[~~(8) benefit to TYC or juvenile profession;~~]

[~~(9) research supervisor, if any (e.g., Chairman of Thesis Committee); and~~]

[~~(10) amount and source of funding, if any.~~]

(g) Research Agreement. TJJD [~~TYC~~] and the researcher(s) must [~~research consultant shall~~] enter into a research agreement prior to the commencement of an outside research project. The agreement must [~~shall~~] contain the following:

(1) a copy of the approved research proposal; [~~description of the research project;~~]

(2) an agreement to maintain the confidentiality of TJJD [~~individual~~] youth;

(3) a clause providing that any patentable product, process, or idea that results from the performance of the research agreement, and for which TJJD [~~TYC~~] has expended appropriated funds, becomes [~~shall become~~] the property of TJJD; [~~the Texas Youth Commission;~~] and

(4) an agreement to furnish TJJD [~~TYC~~] with a copy of the final report prior to its release except as approved by the executive director.

(h) Approval of Proposals.

(1) TJJD approves up to eight research proposals each fiscal year. Additional proposals may be approved only if the director of research determines the additional project(s) would require minimal or no TJJD staff time.

(2) The TJJD research review committee reviews all research proposals. The committee includes representation from the TJJD Research Department, the affected program and operational areas, management, and other administrators.

(3) Proposals are reviewed four times per fiscal year as determined by the director of research. Formal notice of the research review committee's decision is provided to the researcher upon completion of the review process.

(4) Proposals involving on-site research are circulated to affected field administrators for their review, comment, and indication of level of support.

(5) Proposals requiring participation of TJJD youth are presented to the appropriate program directors, senior director(s), and other executive management as appropriate prior to a final decision by the research review committee.

(6) Approved non-TJJD staff proposals involving research projects using TJJD youth as participants in the study, with the exception of surveys, are presented to the TJJD Board for approval. The TJJD Board may delegate to the executive director or designee authority to approve research projects.

(i) Monitoring Projects. The TJJD Research Department staff monitors projects and proposes adjustments when necessary.

(j) Research Results. The Research Department:

(1) reviews research results and evaluates the conclusions;

(2) distributes the final research report to appropriate staff and to other interested parties; and

(3) recommends to the appropriate program directors, senior director(s), and other executive management as appropriate any changes in programs or operations that the research results indicate.

(k) Demonstration Programs.

(1) Demonstration (pilot) programs may be implemented as a result of research conducted by TJJD or by an outside researcher.

(2) The executive director or designee must approve all demonstration programs prior to implementation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201602858
Jill Mata
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 490-7278

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9967, §385.9993

STATUTORY AUTHORITY

Amended §385.9967 and §385.9993 are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§385.9967. Court-ordered [~~Court Ordered~~] Child Support.

(a) This rule establishes [~~The purpose of this rule is to establish~~] a system for [~~whereby~~] the Texas Juvenile Justice Department (TJJD) to comply [~~Youth Commission (TYC) complies~~] with §54.06 of the Texas Family Code[~~, §54.06, which specifies that the agency receives court ordered child support payments for youth committed to the agency's care and deposits these payments in the General Revenue Fund~~].

[~~(b) Upon entry into TYC, a youth's parents are informed where to send child support if they have been court ordered to do so.~~]

(b) [~~(c)~~] As part of TJJD's [~~the~~] intake process, intake staff members review commitment documentation for language ordering child support payments. When this documentation exists, intake staff members ensure [~~that~~] an entry is made to the Correctional Care System [~~correctional care information system~~] detailing the payment amount and terms of rendition.

(c) [~~(d)~~] The Finance Department [~~finance department~~] maintains documentation of court-ordered [~~court ordered~~] child support payments and associated correspondence.

(d) [~~(e)~~] The Finance Department [~~finance department~~] notifies the youth's parents, or other persons responsible, [~~family~~] by letter of the address to which court-ordered child support payments are to be sent and that they must: [~~to:~~]

(1) begin payments [~~and provides the address to which payments are to be sent~~];

(2) render missed payments; and

(3) end payments when the youth is discharged or paroled to home.

(e) [~~(f)~~] TJJD may notify the [~~The~~] committing court [~~is notified by TYC~~] when any court-ordered child support [~~one~~] payment is past due.

(f) [~~(g)~~] TJJD may refer a delinquent [~~Not later than the 90th day after the date the agency determines the normal agency collection procedures for an obligation to the agency have failed, the~~] account [~~may be referred~~] to the Child Support Division of the Office of the Attorney General as [~~if~~] determined by [~~a contractual legal~~] agreement between TJJD [~~TYC~~] and the Office of the Attorney General.

(g) [~~(h)~~] If TJJD receives court-ordered [~~If TYC receives court ordered~~] child support for a Title IV-E certified youth, TJJD will reduce its Title IV-E claim for reimbursement for that youth's cost of care by the amount of child support received. [~~TYC will inquire into the Attorney General's system and determine if the support is for an open Title IV-E case. If the support is for an open case, the funds will be forwarded to the Office of the Attorney General. If the support is for a closed case, the funds will be forwarded to the Texas Department of Family and Protective Services.~~]

[~~(i) The Office of the Attorney General is notified of Title IV-E certification of the youth, new family contact information, discharge, or return to home.~~]

§385.9993. Canteen Operations.

(a) Purpose. This rule provides for the [~~The purpose of this rule is to provide Texas Youth Commission~~] operation of canteens in Texas Juvenile Justice Department (TJJD) [~~on~~] residential facilities or contracting for such operations. [~~the operation.~~]

(b) Definition. [~~Explanation of Terms Used.~~] Canteen [~~operations~~]--any vending operations accessible to [~~for benefit of~~] youth [~~except vending machines~~].

(c) General Provisions.

(1) [~~(c)~~] Residential facilities [~~Institutions~~] may operate canteens on campus.

(2) [~~(d)~~] Should the residential facility [~~institution~~] choose not to operate its own canteen, the facility may contract with its Community Resource Council (council) or another entity [~~Health and Human Services Commission (HHSC) shall have first opportunity to establish a canteen in accordance with Texas Human Resource Code, Chapter 94. Should no canteen be established by the HHSC licensees under Chapter 94, the institution's advisory council may be awarded a contract~~] to provide canteen services.

(d) TJJD-Operated Canteens.

(1) If the residential facility operates its own canteen, merchandise purchases for resale, salaries, and other expenses are paid from appropriated funds (i.e., the Canteen Revolving Fund). The canteen budget must be included in the facility operating budget and approved by the TJJD Board.

(2) Revenues from canteen operations are deposited into the Canteen Revolving Fund. Profits after canteen expenses and sales

taxes are deposited into the Student Benefit Fund in accordance with §385.9971 of this title. The sales taxes are deposited into the State Treasury.

(3) TJJD maintains general procedures that address basic internal controls for merchandise inventory handling and cash handling.

(e) Rules for Contracting for Canteen Services.

(1) TJJD may contract with a local council or another entity for canteen services. A written contract is required and is to include the specific service to be provided and the consideration to be paid, if applicable in accordance with §385.1101 of this title.

(2) If TJJD agrees to make any expenditures related to the operation of the canteen, such payments will be made from the Canteen Revolving Fund. Any proceeds paid to TJJD for the canteen operation are deposited into the Canteen Revolving Fund.

(3) The contracted entity is responsible for collection and deposit of all sales taxes to the State Treasury.

(4) TJJD employees may assist in the provision of canteen services while on duty only when doing so does not interfere with regular job duties or the safety and security of TJJD youth and staff.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.13, §§809.15 - 809.17, §809.19, and §809.20

Subchapter C. Eligibility for Child Care Services, §§809.41 - 809.51, §809.53, and §809.54

Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.75 and §809.78

Subchapter E. Requirements to Provide Child Care, §§809.91 - §809.95

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111 - 809.113, §809.115, and §809.117

The Commission proposes adding the following section to Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.52

The Commission proposes the repeal of the following sections of Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.55

Subchapter D. Parent Rights and Responsibilities, §809.76 and §809.77

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule change is to make amendments to the Commission's Child Care Services rules to address changes resulting from the Child Care and Development Block Grant Act (CCDBG Act) of 2014. The proposed amendments to Chapter 809 also include, where appropriate, changes in rule language based on the Notification of Proposed Rulemaking (NPRM) issued December 24, 2015, by the U.S. Health and Human Services Administration for Children and Families.

The CCDBG Act authorizes the federal Child Care and Development Fund (CCDF), which is the primary federal funding source for providing child care subsidy assistance to low-income families and for improving the quality of care for all children. The Texas Workforce Commission (Agency) is the CCDF Lead Agency in Texas. The CCDF program is administered by the 28 Local Workforce Development Boards (Boards). Additionally, the Texas Department of Family and Protective Services (DFPS) is responsible for administering the health and safety requirements of the CCDF program.

On November 19, 2014, President Obama signed the CCDBG Act of 2014, reauthorizing the CCDBG Act for the first time since 1996. The new law makes significant changes to the CCDF program, designed to promote children's healthy development and safety, improve the quality of child care, and provide support for parents who are working or in training or education.

The primary purpose of the Commission's proposed amendments to Chapter 809 is to implement the following changes to the CCDF program resulting from the CCDBG Act of 2014:

Twelve-Month Eligibility Period

The CCDBG Act of 2014 added a 12-month eligibility and redetermination period requirement for children determined eligible for subsidized child care. This change to the CCDF program is designed to provide more stable assistance to families, protection for working families, and increased opportunities for children to remain in child care services.

CCDBG Act §658E(c)(2)(N)(i) and (ii) require states to demonstrate in the CCDF State Plan that after initial eligibility each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not fewer than 12 months before the state or designated local entity redetermines the eligibility of the child, regardless of changes in income--as long as income does not exceed

the federal threshold of 85 percent of the state median income (SMI)--or temporary changes in participation in work, training, or educational activities.

Therefore, a state shall not terminate assistance prior to the end of the 12-month period if the family experiences a temporary job loss or temporary change in participation in a training or educational activity.

Although the CCDBG Act requires a period of 12-month minimum eligibility and receipt of child care services prior to redetermination, §658E(c)(2)(N)(iii) allows states the option to terminate eligibility due to a permanent (nontemporary) change in work, training, or education. However, the CCDBG Act requires that prior to terminating a subsidy, the state must continue to provide child care assistance for a period of at least three months to allow parents to engage in job search, resume work, or attend an educational or training program as soon as possible.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and

--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

NPRM §98.21(b)(2) allows increases in the parent share of cost for instances in which the family has exceeded a state's initial eligibility income threshold, but still remains under the federal 85 percent of SMI.

Finally, NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Graduated Phaseout of Eligibility

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

Income Calculation to Consider Irregular Income Fluctuations

CCDBG Act §658E(c)(2)(N)(i)(II) requires that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. NPRM §98.21(c) further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Priority and Eligibility for Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. NPRM §98.2 defines a "child experiencing homelessness" as a child meeting the definition of homelessness under the McKinney-Vento Homelessness Act of 1987 (McKinney-Vento Act).

The NPRM preamble clarifies that Lead Agencies have flexibility in how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Additionally, the CCDBG Act and the NPRM require that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Attendance and Provider Reimbursements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

Consumer Education Information

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate, through a consumer-friendly and easily accessible website, consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

--availability of the full diversity of child care services;

--quality of providers;

--state processes for licensing, conducting background checks, and monitoring child care providers;

--other programs for which families that receive child care services may be eligible;

--research and best practices concerning children's development; and

--state policies regarding social-emotional behavioral health of children.

Additionally, NPRM §98.33(d) requires that parent consumer education information also include:

--licensing compliance information for the provider selected by the parent;

--how to submit a complaint regarding a child care provider;

--how to contact community resources that assist parents in locating quality child care; and

--how CCDF subsidies are designed to promote equal access to the full range of child care providers.

CCDBG Act §658E(c)(2)(E) also requires that Lead Agencies provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals and services, when appropriate, for children eligible for subsidized child care, including:

--the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and

--the Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§809.2. Definitions

Attending a Job Training or Educational Program

Consistent with CCDBG Act §658E(c)(2)(N)(i) - (ii), the definition of "attending a job training or educational program" is amended to clarify that the requirement in the definition that the individual be making progress toward successful completion of the program as determined by the Board, is only applied at the parent's 12-month redetermination.

Consistent with the CCDBG Act, care cannot be discontinued during the 12-month eligibility period for failure to make progress toward completion of an education or training program. However, the NPRM allows additional eligibility requirements at the 12-month redetermination period. Boards must ensure that the parent is making progress toward completion of the program, as determined by the Board, when redetermining eligibility for continued care, but are prohibited from making this a condition of eligibility at the parent's initial eligibility determination. When developing policies and procedures for determining if the parent is making progress toward completion of the program, the Commission cautions against relying solely on the parent's grade point average (GPA), particularly one semester's GPA. If a Board uses the GPA, the Commission encourages Boards to establish a minimum threshold that would demonstrate if a parent has consistently failed to complete coursework during the eligibility period.

The requirement in the definition that the individual must be considered by the program to be officially enrolled in and meeting the attendance requirements of the program is retained without change because enrollment and attendance in the program should be maintained throughout the 12-month eligibility period. Discontinuing care due to a nontemporary cessation of attendance in a training or education activity during the 12-month eligibility period is addressed in §809.51(b).

As described in amended §809.73, parents are required to report items that impact a family's eligibility during the 12-month eligibility period. Boards may develop procedures for confirming continued enrollment and attendance during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities.

The Commission notes that the requirements in §809.41 requiring Board policies for child care during education, including time limits or eligibility based on the type of education pursued by the parent, are not changed by these amendments.

A Child Experiencing Homelessness

Consistent with NPRM §98.2, §809.2 is amended to add the definition for a "child experiencing homelessness" as a child meeting the definition of homeless pursuant to the McKinney-Vento Act.

Child with Disabilities

The definition of a "child with disabilities" is amended to align with the definition under §504 of the Rehabilitation Act of 1973.

Improper Payments

The definition of "improper payments" is amended to align with the current definition of an improper payment in CCDF regulation §98.100(d). The amended §809.2(11) defines an improper payment as:

Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes:

--to an ineligible recipient;

--for an ineligible service;

--for any duplicate payment; and

--for services not received.

Regulated Child Care Provider

The definition of a "regulated child care provider" is amended to remove providers licensed by the Texas Department of State Health Services (DSHS) as a youth day camp as eligible providers of subsidized child care services.

CCDBG Act §658H and NPRM §98.43 require that states have in effect "requirements, policies, and procedures to require and conduct criminal background checks for child care staff members of all licensed, regulated, or registered child care providers and all providers eligible to deliver services." These requirements include a Federal Bureau of Investigation (FBI) fingerprint check. Relative providers are exempt from this requirement, which must otherwise be implemented no later than September 30, 2017.

DSHS youth day camps are currently exempt from DFPS child care licensing and monitoring requirements. DSHS conducts background checks of staff in compliance with state law for youth camps, but unlike the CCDBG Act and the NPRM, state law does not require an FBI fingerprint criminal background check for youth day camp staff. Nonetheless, certain youth day camps may be eligible for DFPS to license as child care centers. Therefore, to allow sufficient time for day camps that serve subsidized children to choose to work with DFPS to become licensed, the Commission will not implement this provision until September 30, 2017.

Working

The definition of "working" is amended to remove job search activities from the definition. Child care during periods of cessation of work, job training, or education is addressed in §809.51.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission proposes the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13 is amended to remove the requirement in subsection (c) for Boards to submit policy modifications, amendments, or new policies to the Commission within two weeks of adopting the policy. This section retains the requirement that Boards submit Board policies to the Commission upon request. The additional requirement to submit changes to policies within a specific time frame is redundant. The Commission makes this change to reduce administrative burden on both Board and

Agency staff. Section 809.13 is amended to remove multiple Board policy requirements that no longer apply under the CCDBG Act.

Consistent with the CCDBG Act 12-month eligibility period requirement, §809.13 is amended to remove the requirement for Boards to have a policy on frequency of eligibility determinations, as the frequency is now established under federal law.

Section 809.13 is amended to remove the option for Boards to have a policy to include provider eligibility for nonrelative listed family homes. CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF-subsidized providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF-subsidized services.

Section 809.13 is amended to remove the requirement that Boards establish policies for attendance standards in order to be consistent with CCDBG Act §658E(c)(2)(S), which requires that provider reimbursement policies support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. Attendance standards are established in amended §809.78, and reimbursement policies based on enrollments are established in §809.93.

Section 809.13 is amended to remove the requirement that Boards have procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA). As explained in the changes to Subchapter D, the PRA is no longer a requirement.

Section 809.13 is amended to remove the requirement that Boards have a policy regarding the mandatory waiting period for reapplying or being placed on the waiting list. As explained in the changes to Subchapter C, the mandatory waiting period is no longer required.

§809.15. Promoting Consumer Education

Section 809.15(b) is amended to clarify that consumer education information includes consumer education information provided on the Board's website.

Section 809.15(b)(4) is amended to remove the requirement that Boards include in consumer education information for parents a description of the school readiness certification system, as the program has been discontinued.

Information on Resources for Developmental Screening

CCDBG Act §658E(c)(2)(E)(ii) requires that states provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals to services, when appropriate, for children eligible for subsidized child care regarding:

--the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and

--Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

Information on developmental screenings must also include a description of how a family or eligible child care provider can use available resources and services to obtain developmental screenings for children receiving assistance who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

NPRM §98.33(c) clarifies that the developmental screening information should be made available to parents as part of the intake process and to providers through training and education.

Consistent with CCDBG Act §658E(c)(2)(E)(ii) and NPRM §98.33(c), §809.15(b) is amended to add the requirement, pursuant to CCDBG Act §658E(c)(2)(E)(ii), that Boards include:

--information on resources and services available in the local workforce development area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

--the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and

--developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

--a link to the Agency's designated child care consumer education website.

The Commission clarifies that Boards are not required to make referrals or to ensure that developmental screenings are conducted. The only requirement is that Boards provide information to parents regarding available local resources and developmental screenings.

Additional information and guidance regarding the manner in which information on developmental screenings is made available will be provided by the Agency through updates to the Child Care Services Guide. Additionally, the Agency is working with statewide training partners regarding making training and education on developmental screenings available to providers.

The Commission also notes that this provision does not affect the rules, policies, and procedures currently in place regarding approval of the inclusion rate pursuant to §809.20(e).

Consumer Education

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

--availability of the full diversity of child care services;

--quality of providers;

--state processes for licensing, conducting background checks, and monitoring child care providers;

--other programs for which families that receive child care services may be eligible;

--research and best practices concerning children's development; and

--state policies regarding social-emotional behavioral health of children.

Additional information and guidance regarding the manner in which consumer education information is made available will be provided by the Agency through updates to the Child Care Services Guide, including guidance on:

--providing licensing compliance information;

--making consumer education information available in printed form; and

--ensuring consumer education information is accessible to both individuals with disabilities and individuals with limited English proficiency.

Additionally, NPRM §98.33(d) requires that parent consumer education information also include:

--licensing compliance information of the provider selected by the parent;

--how to submit a complaint regarding a child care provider;

--how to contact community resources that assist parents in locating quality child care; and

--how CCDF subsidies are designed to promote equal access to the full range of child care providers.

All consumer education required by the final CCDF regulations is available on the Texas Child Care Solutions website at www.texaschildcaresolutions.org.

Section 809.15 is amended to require that Boards provide a link to the Commission's designated child care consumer education website as part of the consumer education information provided to parents.

§809.16. Quality Improvement Activities

Section 809.16 is amended to remove outdated CCDF regulatory citations. The current CCDF regulations are being amended by the U.S. Department of Health and Human Services and the NPRM language has changed citations for quality improvement activities and the use of CCDF for construction. Further, the list of allowable quality activities in the CCDF regulations has been expanded to include quality activities listed in the CCDBG Act. Section 809.16 removes the specific citations list of quality activities, and replaces it with the general reference for CCDF in 45 C.F.R., Part 98.

§809.17. Leveraging Local Resources

Section 809.17 is amended with language moved, without changes, from Subchapter C §809.42(c) related to public entities certifying expenditures for direct child care, as the language is more relevant to the local match process described in §809.17 than to eligibility for child care services described in §809.42(c).

§809.19. Assessing the Parent Share of Cost

Parent Share of Cost Incentives to Consider Selection of a TRS-Certified Provider

NPRM §98.30(h) includes provisions designed to provide parents with incentives that encourage the selection of high-quality child care without violating parental choice provisions. The NPRM provides states with flexibility in determining what types of incentives to use to encourage parents to choose high-quality providers, including the option to lower the parent share of cost for parents who choose a high-quality provider.

Consistent with NPRM §98.30(h) and to encourage parents to select a TRS-certified provider as well as encourage greater provider participation in the TRS program, the Commission amends §809.19(a)(1) to allow Boards to consider the parent selection of a TRS-certified provider in the parent share of cost assessment.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and

--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

Consistent with the NPRM, §809.19(a) is amended to add the requirement that the parent share of cost is assessed only at the following times:

--Initial eligibility determination;

--12-month eligibility redetermination;

--The addition of a child in care that would result in an additional amount of parent share of cost; and

--Parent's report of change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment.

Basing the Parent Share of Cost on the Cost of Care or Subsidy Amount

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Section 809.19 is amended to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The parent share of cost must only be based on the following factors:

--the family's size and income, and

--may also consider the number of children in care and parent selection of a TRS-certified provider as described in §809.19(a)(1)(B).

The Commission retains the rule language in §809.19(d) that allows Boards to review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. However, this reduction shall not be based on the Board's maximum reimbursement rate or the provider's published rate.

The Commission notes that the current rules at §809.19(d) allow Boards to review the assessed parent share of cost for possible reductions if there are extenuating circumstances that jeopardize a family's self-sufficiency. Extenuating circumstances include unexpected temporary costs such as medical expenses and work-related expenses that are not reimbursed by the employer. The Commission is aware that some Boards may allow a limited number of these reductions during the eligibility period. Such policies are still allowed, but Boards must ensure that the parent share of cost is reduced any time the parent reports a change in income, family size, or number of children in care that would result in a reduced parent share of cost.

The Commission further notes that amended §809.73 requires that parents report such changes within 14 calendar days of the change. Changes in the parent share of cost should be made at

the beginning of the month following the reported change. If the parent does not report the change within that time period, the Board is not required to make the change retroactive from the actual date of the reduction.

The Commission is also aware that some Boards reduce the parent share of cost for a limited period of time during the initial eligibility period in order to assist the parent, particularly newly employed parents, with the parent share of cost. This remains an allowable practice under §809.19(d) regarding a reduction of the assessed parent share of cost. After this initial reduction, the parent share of cost may be regularly assessed based on the family size and income and number of children in care, as required by §809.19(a)(1)(B).

Exemptions for Parents of Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require that states give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Section 809.19(a)(2) is amended to require that parents of a child experiencing homelessness be exempt from the parent share of cost.

The Commission emphasizes that pursuant to §809.19(e), the Board or its child care contractor shall not waive the assessed parent share of cost unless the parent is covered by an exemption specified in §809.19(a)(2).

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) is amended to remove the requirement that Boards establish enhanced reimbursement rates for preschool-age children at providers that obtain school readiness certification, as the school readiness certification system has been discontinued.

Section 809.20(c) is amended to remove the September 1, 2015, effective date for the TRS tiered reimbursement rates as these requirements are currently in effect.

Section 809.20(d) is amended to clarify in rule language the current requirement and practice that there must be a 2 percentage point difference between the TRS star levels.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission proposes the following amendments to Subchapter C:

§809.41. A Child's General Eligibility for Child Care Services

CCDBG Act §658E(c)(2)(N)(i) requires that each child who receives CCDF assistance be considered to meet all eligibility requirements and receive assistance for not less than 12 months before eligibility redetermination. NPRM §98.20 clarifies that general eligibility requirements are applicable "at the time of eligibility determination or redetermination."

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.20, §809.41 is amended to add language clarifying that a child's general eligibility requirements--i.e., child's age, citizenship status, and residency, and the family's income, work status, and attendance in a job training or educational activity--are applied at the time of eligibility determination or redetermination. Changes to the child's age or residency, the family's income, participation in work, job training, or education activities that occur during the 12-month eligibility period and affect the child's continued care and eligibility are covered in §809.42.

The CCDBG Act revised the definition of eligibility at §658P(4)(B) so that, in addition to being at or below 85 percent of SMI for a family of the same size, the "family assets do not exceed $1,000,000 (as certified by a member of such family)." This requirement is included in NPRM §98.20(a)(2)(ii).

Section 809.41(a)(3)(A) is amended to include this requirement and clarify that a family member must certify that the family assets do not exceed the $1,000,000 threshold. This certification will be based on the parent's self-attestation and will be included in the application for services. Boards are not required to verify this certification; however, if it is discovered that the family may exceed the $1,000,000 asset threshold, the parent may be subject to fraud fact-finding procedures, as described in Subchapter F. Additional guidance will be provided in the Child Care Services Guide.

As mentioned previously, CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations.

Consistent with this requirement, §809.41(a)(2)(A) is amended to include language that families meeting the definition of experiencing homelessness in §809.2 are considered as having income that does not exceed 85 percent of the state median income. Therefore, Boards are not required to conduct income eligibility determinations for families with a child experiencing homelessness.

Section 809.41 is amended to remove subsection (d) related to job search limitations. Continued child care for job search is described in §809.51.

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

NPRM §98.21(b) provides two options for states to use for the CCDBG Act's graduated phaseout requirement. The phaseout can be accomplished either by:

--establishing a second tier of eligibility at 85 percent of SMI if the parents, at the time of redetermination, are working or attending a job training or educational program, even if their income exceeds the initial income limit; or

--using the approach specified above, but only for a limited period of not less than an additional 12 months.

Section 809.41 is amended to add language requiring that Boards that establish initial family income eligibility at a level less than 85 percent of the SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit. As a result, for Boards with an initial eligibility limit lower than 85 percent of the SMI, the family's income eligibility for continued care will be 85 percent of the SMI at the following times:

--at the 12-month redetermination;

--once a parent resumes activities during the three-month period described in §809.51; and

--any time a parent reports a change in income that may exceed 85 percent of the SMI.

This language is consistent with NPRM §98.21(b)(1)(i), which provides the option to require that the family remain income-eligible for care after passing the initial income eligibility limit, including at the family's scheduled 12-month eligibility redetermination, as long as the family income does not exceed 85 percent of SMI.

In determining if the family exceeds 85 percent of the SMI, the Board will use income calculation methodology and guidance that take into consideration fluctuations of income pursuant to §809.44(a).

The Commission notes that Boards are not required to establish initial family income eligibility at a level less than 85 percent of the SMI. The graduated phaseout requirements only apply to Boards that have established income eligibility thresholds pursuant to §809.41(a) that are less than 85 percent of the SMI.

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42 is amended to include rule provisions related to eligibility verification, determination, and redetermination consistent with the CCDBG Act.

Section 809.42(a) is amended to emphasize that a Board shall ensure that all eligibility requirements for child care are verified prior to authorizing care. Due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF assistance will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that eligibility is properly and accurately verified prior to authorizing care.

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.21, amended §809.42(b) requires that Boards ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

§809.43. Priority for Child Care Services

Consistent with CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51, which require states to give priority for services to children experiencing homelessness, the Commission amends §809.43 to add children experiencing homelessness as a second priority group served, subject to the availability of funds. This priority group will follow the three priority groups in state statute--children in protective services, children of a qualified veteran or spouse, and children of foster youth.

§809.44. Calculating Family Income

CCDBG Act §658E(c)(2)(N)(i)(II) and NPRM §98.21(c) require that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. The NPRM further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Section 809.44(a) is amended to reflect these new requirements. The rule language requires that Boards ensure family income is calculated in accordance with Commission guidelines. Consistent with the CCDBG Act, rule language also requires that Commission guidelines:

--take into account irregular fluctuations in earnings; and

--ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI, do not affect eligibility or parent share of cost.

A standard and uniform methodology applied consistently across all 28 local workforce development areas (workforce areas) is important to ensure that the state is meeting the requirements of the CCDBG Act regarding fluctuations of income. This is also important, as child care is also required to continue if a parent moves to another workforce area.

The Commission will be developing guidelines based on the current methodology and income sources used by the Workforce Innovation and Opportunity Act of 2014 (WIOA) adult program. WIOA annualizes family income using the most recent six months of income sources. By taking into consideration six months of income, this methodology meets the requirement to take into account irregular fluctuations in earnings and will ensure that temporary increases in monthly income do not affect eligibility or parent share of cost. Additionally, aligning the child care income calculation sources and methodology with sources and methodology used by WIOA will provide consistency among the Commission's two major programs in which income is calculated for eligibility purposes.

The guidelines will identify any differences between the two programs that are specific to the relevant program, while retaining the overall goal of aligning the income calculation methodology as closely as possible, given any federal guidance specific to the programs. The guidance will include, but not be limited to, the following:

--Income documentation requirements at initial eligibility that may differ from requirements at redetermination;

--Documentation requirements for gaps in income;

--Calculation of bonuses received during the 12-month eligibility period;

--The methodology and documentation used to determine family income for changes reported during the 12-month eligibility period; and

--The methodology and documentation used to determine family income for parents who resume work, training, or education during the three-month period of nontemporary cessation of activities.

Section 809.44(b) is amended to provide an updated itemized list of income sources that are specifically excluded from determining family income. This list includes income sources that are specifically excluded by various federal laws or regulations in determining eligibility for public assistance programs including CCDF, as well as income sources that are excluded by the WIOA adult program.

The specific exclusions are:

--Medicare, Medicaid, Supplemental Nutrition Assistance Program (SNAP) benefits, school meals, and housing assistance;

--Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

--Needs-based educational scholarships, grants, and loans, including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;

--Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

--Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;

--VISTA and AmeriCorps living allowances and stipends;

--Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;

--Foster care payments and adoption assistance;

--Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

--Income from a child in the household between 14 and 19 years of age who is attending school;

--Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);

--Unemployment compensation;

--Child support payments;

--Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;

--Onetime income received in lieu of TANF cash assistance;

--Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

--Regular payments from Social Security, such as Old-Age and Survivors Insurance Trust Fund;

--Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);

--Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and

--Any income sources specifically excluded by federal law or regulation.

The Commission understands that the new income calculation methodology and income exemptions may equate to lower parent share of cost assessments, thereby increasing the cost of care and reducing the number of children the Board may be able to serve. The Agency will continue to analyze Board costs, including parent share of cost, as part of the Agency's performance target methodology.

New §809.44(c) states that income that is not listed in §809.44(b) as excluded from income is included as income.

§809.45. Choices Child Care

Section 809.45(b) is amended to clarify that for a parent receiving Choices Child Care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that:

--child care continues for the three-month period pursuant to §809.51; and

--the provisions of §809.51 shall apply if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 is amended to remove provisions that:

--duplicate the 12-month eligibility period specified in §809.42; or

--would end care prior to the end of the 12-month eligibility period.

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care

Section 809.47 is amended to remove language stating that SNAP Employment and Training (SNAP E&T) care continues as long as the case remains open.

Section 809.47(b) is added to clarify that for a parent receiving SNAP E&T Child Care who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that:

--child care continues for the three-month period pursuant to §809.51; and

--the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

§809.48. Transitional Child Care

Section 809.48 is amended to remove provisions that would end care prior to the end of the 12-month eligibility period.

§809.49. Child Care for Children Receiving or Needing Protective Services

Section 809.49 is amended to clarify that child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.

Section 809.49 is also amended to clarify that the requirements of §809.91(f)(1) do not apply to foster parents whose care is authorized by DFPS. The language clarifies that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director, or other individual with an ownership interest in the provider.

A technical change to §809.49(a)(2) is made to clarify that DFPS may authorize care for a child under the age of 19.

§809.50. At-Risk Child Care

Section 809.50 is amended to clarify that eligibility requirements for At-Risk child care are applied at initial determination and at the 12-month eligibility redetermination, pursuant to §809.41 and §809.42.

§809.51. Child Care during Interruptions in Work, Education, or Job Training

Section 809.51 is amended to include CCDBG Act and NPRM requirements regarding the provision of child care during interruptions in work, education, or job training. The section contains the rules related to both temporary interruptions and permanent cessation of activities during the 12-month eligibility period.

Section 809.51(a) is amended to include the CCDBG Act requirement that if a child met all of the applicable eligibility requirements for any child care service in Subchapter C on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period, regardless of any:

--change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

--temporary change in the ongoing status of the child's parent as working or attending a job training or education program.

Consistent with language in the NPRM, a temporary change shall include, at a minimum, any:

--time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

--interruption in work for a seasonal worker who is not working between regular industry work seasons;

--student holiday or break for a parent participating in training or education;

--reduction in work, training or education hours, as long as the parent is still working or attending a training, or education program;

--other cessation of work or attendance in a training or education program that does not exceed three months;

--change in age, including turning 13 years old during the eligibility period; and

--change in residency within the state.

Section 809.51(b) is amended to require that during the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (b)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

Section 809.42(c) is amended to state that if a parent resumes work or attendance at a job training or education program at any level and at any time during the three months, Boards shall ensure that:

--care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent; and

--the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19.

This is consistent with NPRM §98.21(a)(3), which prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income.

The rule language also clarifies that the Board child care contractor shall verify only:

--that the family income does not exceed 85 percent SMI; and

--the resumption of work or attendance at a job training or education program.

School Holidays and Breaks

The Commission clarifies that student holidays such as spring break and breaks between semesters that are less than three months are considered temporary changes, and eligibility shall continue during those breaks. Breaks between semesters that last longer than three months are considered nontemporary, and care ends if the parent does not resume attendance at an education or job training program, or does not participate in work within three months of the end of the semester.

Reductions in Work, Training, or Education for Dual-Parent Families

The Commission clarifies that in a dual-parent family, if both parents have a nontemporary loss of job (or end of training/education activities), then the family would be subject to the three-month job search period prior to termination. However, if one parent experiences a nontemporary change, then this would be considered a reduction in the dual-parent 50-hour participation requirements. Under the CCDBG Act, a reduction in work is not considered a permanent loss of job and is not subject to discontinuation of the child's care. Care would continue through the 12-month period without requiring care to end if one parent does not resume activities within three months. The child is still residing with at least one parent who is working and is still eligible under the CCDBG Act.

Continued Care for Children over the Age of 13

The Commission notes that the DFPS Child Care Licensing allows children under the age of 14 (and under the age of 19 for children with disabilities) to receive care at a regulated facility. However, the Commission is aware that some child care facilities do not serve children over the age of 13. In such a case, the Board must ensure that eligibility continues at a different provider selected by the parent until the end of the child's eligibility period, unless the parent voluntarily withdraws from child care services.

Continued Care for Children and Families Relocating to Another Workforce Area

Under the CCDBG Act, a change in the child's residence is not grounds for ending care in the state, regardless of the enrollment status of the workforce area to which the parent moved. The Commission understands that a Board at full enrollment would be required to enroll and fund children even if the Board enrollment of new children is closed at the time. The movement of children both into and out of workforce areas is anticipated to be balanced throughout the year. However, the Agency will track this movement and the fiscal impact on Boards to determine if funding amounts should be adjusted accordingly.

Additional policies, procedures, and documenting requirements regarding continuation of care for children and families who relocate to another workforce area will be provided as updates to the Child Care Services Guide.

The Commission clarifies that the Board that determined eligibility at the beginning of the 12-month period is responsible for any subsequent finding of improper eligibility determinations. However, the Board in the workforce area in which the family relo-

cates is responsible for verifying that the move did not result in a nontemporary loss of work, training, or education, and the family is not over 85 percent of the SMI.

The Commission clarifies that if the move to a different workforce area does not result in a change of provider (i.e., the child remains at the originating workforce area provider), then care would continue at that provider under the originating Board's agreement, rates, and funding through the remainder of the authorization for care and the end of the 12-month eligibility period. However, if the move to a different workforce area results in or is accompanied by a change in provider, then the receiving Board will establish and fund the authorization.

The Commission also clarifies that if a parent is participating in the three-month period of continued care and relocates to a different workforce area without resuming activities, then the parent would not receive a new three-month period, but is entitled to continue the three-month period that began in the previous workforce area.

Other Cessation of Work, Training, or Education Activities

The Commission recognizes that there are situations, such as parent incarcerations or other circumstances, that may not be clearly defined in the rules. The Commission will work with Boards to provide guidance on these situations. As a general rule, if the separation from activities is of a length that would allow the parent to continue participation within three months, then care would continue through the remainder of the 12-month eligibility period. If, however, the separation is expected to last over three months, then care would be discontinued three months after the cessation of work, training, or education.

Number of Three-Month Periods in a 12-Month Eligibility Period

The CCDBG Act requires that care continue for at least 12 months following the initial eligibility determination. Neither the CCDBG Act nor the NPRM allows states to put limits on the number of three-month periods of continued care that a parent may have during the 12-month eligibility period. Parents will be allowed a three-month period of continued care for each nontemporary cessation of activities within the 12-month eligibility period.

Parent Share of Cost during the Three-Month Period of Continued Care

As required in §809.19(a)(1)(C), the parent share of cost is reassessed if a parent reports a change in income that would result in a reduced parent share of cost. Accordingly, the parent share of cost should be reassessed during the three-month period due to the resulting reduction of family income. As mentioned in the discussion on calculating family income in §809.44, the Commission will provide guidance on the methodology used to calculate income during this period in order to take into consideration fluctuation in income. During this period, Boards may also reduce the parent share of cost based on the Board policies for reductions due to extenuating circumstances pursuant to §809.19(d).

Increases in the Level of Care following the Three-Month Period of Continued Care

Section 809.51(c) requires care to continue to the end of the 12-month eligibility period at the same or greater level, depending on any increase in the activity hours of the parent. The Commission expects that the parent should provide documentation to verify that such an increase is warranted.

Implementation of the 12-Month Eligibility Period

The Commission clarifies that eligibility determinations under the new rules will go into effect at the family's first scheduled redetermination (under the Board's previous determination period) following October 1, 2016.

§809.52. Child Care for Children Experiencing Homelessness

New §809.52 is added to include initial eligibility for children experiencing homelessness. CCDBG Act §658E(c)(3) requires that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Consistent with this requirement, §809.52(a) requires that for a child experiencing homelessness, a Board shall ensure that the child is initially enrolled for a period not to exceed three months.

Section 809.52(b)(1) states that if, during the three-month enrollment period, the parent of a child experiencing homelessness is unable to provide documentation verifying that the child meets the age and citizenship status requirements under §809.41(a)(1) - (2), then care shall be discontinued following the three-month enrollment period. Consistent with NPRM §98.51, payments of child care services for this three-month period are not considered improper payments.

Section 809.52(b)(2) states that if, during the three-month enrollment period, a parent provides documentation verifying eligibility under §809.41(a) (regarding the child's age and citizenship status, and the parent's participation in work, job training, or education activities) then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

For parents of children experiencing homelessness, parent self-attestation of the eligibility requirements under §809.41(a)(1) - (2) will be allowed for the first three months for all eligibility requirements, as long as the family meets the definition of homelessness. This can be verified through another entity such as a school district or housing authority, or by the Board contractor.

The Agency will work with Boards to provide guidance on determining initial and continuing eligibility for homeless families.

The Commission clarifies that parents of children experiencing homelessness must have appeal rights pursuant to §809.74.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 is amended to clarify that the provisions related to child care for children serviced by special projects are only for special projects funded through non-CCDF sources.

§809.54. Continuity of Care

Section 809.54 is amended to clarify that for enrolled children, including children whose eligibility for Transitional child care has expired, care continues through the end of the applicable eligibility periods described in §809.42.

Rule language also clarifies that enrolled children of military parents in military deployment remain eligible for continued care, including parents in military deployment at the end of the 12-month eligibility redetermination period.

Section 809.54 also removes the temporary placement of a child if space is available due to another child's absence due to custody arrangements, as temporary placements are contrary to the CCDBG Act's 12-month eligibility requirements.

§809.55. Mandatory Waiting Period for Reapplication

Section 809.55, regarding a mandatory waiting period for reapplication if care is terminated for certain reasons, is repealed because the listed termination reasons for ending care are no longer applicable.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to clarify that the 20-day eligibility notification following receipt of eligibility documentation from the parent is applicable for both the initial eligibility determinations and the 12-month eligibility redetermination.

Section 809.71(9) is amended to remove the exceptions to the 15-day notification of termination for instances in which care is to end immediately due to a parent no longer participating in Choices or SNAP E&T or due to a child being absent five consecutive days, as these are no longer eligible reasons to terminate care during the 12-month eligibility period.

Regarding the 15-day termination notice, the Commission clarifies that for parents with a nontemporary cessation of activities, at a minimum, notification must be provided at least 15 days prior to the end of the three-month period of continued care. However, Boards should also clearly notify or provide clear instructions to parents at the beginning of the three-month period that care will end if the parent does not resume participation at any level within three months.

Section 809.71 is amended to remove the 30-day notification due to terminations to make room for a priority group member, as this is no longer an eligible reason to terminate care during the 12-month period.

Section 809.71 is also amended to remove the requirement that parents be informed of the Board's attendance policies. Notification of the attendance standards are located in amended §809.78.

§809.72. Parent Eligibility Documentation Requirements

Section 809.72(a) is amended to clarify that child care cannot be determined or redetermined and care cannot be authorized until parents provide to the Board's child care contractor all the information necessary to determine eligibility.

Section 809.72(b) is amended to clarify that a parent's failure to submit documentation shall result in initial denial of child care service or the termination of services at the 12-month redetermination period.

As mentioned in §809.42(a), due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF-funded child care will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that all eligibility documentation submitted is properly and accurately verified prior to authorizing care. As described in §809.42(c), an exception to this requirement exists for a child experiencing homelessness.

§809.73. Parent Reporting Requirements

CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(e)(2) state that any requirement for parents to provide notification of changes in circumstances shall not constitute an undue burden on families. Any such requirements shall:

--limit notification requirements to changes that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a nontemporary change in the status of the child's parent as working or attending a job training or educational program) or changes that impact the Lead Agency's ability to contact the family or pay providers;

--not require an office visit to fulfill notification requirements; and

--offer a range of notification options (e.g., phone, e-mail, online forms, extended submission hours) to accommodate the needs of working parents.

Further NPRM language states that Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis:

--Lead Agencies are required to act on the information provided by the family if it would reduce the family's copayment or increase the family's subsidy.

--Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates that the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, if the family has experienced a nontemporary change in work, training, or educational status.

Section 809.73 related to parent reporting requirements is amended consistent with this guidance.

Section 809.73(a) is amended to require Boards to ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

This is further clarified in §809.73(b), which is amended to state that parents shall report to the child care contractor, within 14 days of the occurrence, the following:

--Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

--Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.42; and

--Any change in family residence, primary phone number, or e-mail (if available).

The amendment extends the number of days to report from the current 10 calendar days to 15 calendar days. This will allow additional time for parents to report changes while also allowing sufficient time for Boards to make any requested changes in the parent share of cost or for other authorization changes to become effective, as well as sufficient time to adjust the parent's eligibility (if the reported change caused the family to exceed 85 percent SMI or constitutes a nontemporary change in activity status).

Because the CCDBG Act limits termination of eligibility for care to the parent's permanent cessation of work, training, or education activities, or the family exceeding 85 percent of SMI (taking into consideration fluctuations of income), §809.73 is also amended to remove the provision that care may be terminated and costs may be recovered due to a parent failure to report a change in §809.73(b). However, the provision that failure to report a change may result in fact-finding for suspected fraud as described in Subchapter F is retained.

Section 809.73 is also amended to require Boards to allow parents to report, and require the child care contractor to take appropriate action, regarding changes in:

--income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and

--work, job training, or education program participation that may result in an increase in the level of child care services.

The CCDBG Act requires that reporting requirements during the 12-month period do not constitute an undue burden on working parents, and the NPRM clarifies that the reporting requirements must only be on information that affects eligibility or the ability to contact the parent and pay the provider. Therefore, the Commission emphasizes that Boards must not require parents to report any changes during the 12-month period other than those specified in amended §809.73(a) - (b).

The Agency will work with Boards to provide technical assistance on establishing clear and family-friendly information for parents on when they are required to report income and family changes.

Additionally, the Agency will work with Boards to provide reports and tools, including tools associated with wage records and a child's attendance tracking, to assist Boards in identifying parents and families that:

--may have changes in income or family size that may have resulted in the family income exceeding 85 percent of the SMI; or

--may have experienced a nontemporary change in work, training, or education activities.

Implementation of the Reporting Requirements

The Commission clarifies that parents with children enrolled prior to the effective date of the rule amendments may be notified of the new parent reporting requirements at the parent's next scheduled redetermination. However, the standards for assessing any reported changes to the parent's eligibility as well as changes in the consequences for failure to report will be effective on the effective date of the amended rules. Therefore, the Board must ensure that if a parent fails to report a change that was required under the former rules, care shall not be terminated and recoupment is not required for this failure to report, subject to the requirements in Subchapter F regarding recoupments.

§809.74. Parent Appeal Rights

Section 809.74 is amended to clarify that parents may appeal the amount of any recoupment determined pursuant Subchapter F of this chapter.

§809.75. Child Care during Appeal

Section 809.75 is amended to remove the provisions for not continuing care during a parent appeal as the reasons for terminating care provided in this section no longer apply.

§809.76. Parent Responsibility Agreement

As stated previously, CCDBG Act §658E(c)(2)(N) states that each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not less than 12 months before the state redetermines eligibility.

NPRM §98.20(b)(4) clarifies that the state may establish additional eligibility conditions, regarding the child's age, citizenship, residing in a family with an income that does not exceed 85 percent SMI, and residing with parents who are working or in job training or education, as long as the additional requirements do not impact eligibility other than at the time of eligibility determination or redetermination. Additionally, CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(d) require that Lead Agency eligibility redetermination requirements do not unduly disrupt parent work, training, or education activities.

The PRA in §809.76 requires that the parent shall:

--pursue child support by:

--cooperating with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support on an ongoing basis by either:

--providing documentation that the parent has an open case with OAG and is cooperating with OAG; or

--opening a child support case with OAG and providing documentation that the parent is cooperating with OAG; or

--providing documentation that the parent has an arrangement with the absent parent for child support and is receiving child support on an ongoing basis;

--not use, sell, or possess marijuana or other controlled substances; and

--ensure that each family member younger than 18 years of age attend school regularly (unless exempt under state law).

Current §809.76(c) requires that the parent demonstrate compliance with these provisions within three months of initial eligibility. If the parent does not demonstrate compliance within three months, child care is required to end. Some Boards require parents to demonstrate compliance with the PRA at the time of initial eligibility.

Boards have reported that parents meet PRA requirements by opening an OAG case at initial determination, closing the case immediately following initial determination, and then reopening the case immediately prior to redetermination. This increases OAG's workload and requires Boards and Board contractors to track parent compliance with the PRA--without meeting the PRA's intent.

Therefore, §809.76 regarding the PRA is repealed, as the requirements of the provisions of the PRA:

--cannot be applied or enforced during the 12-month eligibility period;

--cause delays in determining eligibility; and

--cause errors in calculating income due to inconsistent receipt of child support.

§809.77. Exemptions from the Parent Responsibility Agreement

Section 809.77 related to exemptions from the PRA is repealed.

§809.78. Attendance Standards and Reporting Requirements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs

of providing child care by delinking payments from a child's occasional absence. The options include:

--paying providers based on a child's enrollment, rather than attendance;

--providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;

--providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and

--requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

As described in §809.93, consistent with the requirements in the CCDBG Act and the NPRM, the Commission amends §809.93 to state that providers shall be reimbursed based on the child's enrollment, rather than daily attendance.

However, in order to ensure that authorizations for reimbursement based on enrollments do not result in underutilization of services, and to prevent the potential for waste, fraud, or abuse of public child care funds, the Commission establishes statewide attendance standards designed to encourage parents to fully use child care services.

Section 809.78(a)(1) is amended to require that parents shall be notified that the eligible child shall attend on a regular basis consistent with the child's authorization for enrollment. Failure to meet attendance standards may:

--result in suspension of care; and

--be grounds for determining that a change in the parent's participation in work, a job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

Section 809.78(a)(2) establishes allowable attendance standards as fewer than:

--five consecutive absences during the month;

--ten total absences during the month; or

--forty-one absences in a 12-month period.

Section 809.78(a)(3) states that child care providers may end a child's enrollment with the provider if the child does not meet the provider's established attendance policy. As will be discussed in Subchapter E, regarding provider reimbursement based on enrollment, a child's eligibility cannot end based on the number of absences. However, parents must be notified that a provider is allowed to discontinue enrollment of the child at the provider facility if the child does not meet attendance standards established by the provider.

Section 809.78(a) is also amended to remove the provisions that child care services may be terminated for absences or misuse of attendance automation policies. However, the rules retain the provisions that parents be notified that misuse of the automated attendance procedures is grounds for a potential fraud determination.

The Commission acknowledges that the rule amendments related to enrollments and absences will require substantial modifications to existing Board policies and procedures as well as changes to the Agency's information and attendance automation systems. The Agency will work with Boards regarding these changes and to develop necessary reports to assist Boards, parents, and providers in tracking attendance.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission proposes the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF services. Therefore, §809.91(b) is amended to remove requirements for Boards choosing to allow nonrelative listed homes as eligible child care providers as these providers are no longer eligible to care for CCDF-subsidized children.

Section 809.91(f) is amended to clarify that foster parents who are also directors, assistant directors, or have an ownership in the child care center, may receive reimbursement if authorized by DFPS.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92(b) is amended to remove the specific attendance reporting requirements for providers to:

--document and maintain a list of each child's attendance and submit the list upon request;

--inform the Board when an enrolled child is absent; and

--inform the Board that a child has not attended the first three days of scheduled care.

The implementation of the child care attendance automation system eliminates the need for providers to report this attendance to the Board. However, the Commission notes that removing the requirement from Chapter 809 that providers document and maintain a list of each child's attendance does not remove the DFPS child care licensing requirement for providers to maintain a daily sign-in sheet for all children enrolled at the facility.

§809.93. Provider Reimbursement

As explained in §809.78 regarding a child's attendance standards, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

--paying providers based on a child's enrollment, rather than attendance;

--providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;

--providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and

--requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

To ensure statewide consistency for families and statewide compliance to the requirements in CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m), §809.93 is amended to implement a statewide policy that reimburses regulated providers based on the child's enrollment, rather than daily attendance.

The rules retain the requirement that relative child care providers are not reimbursed for days on which the child is absent. The Commission retains this provision based on the contention that unregulated relative providers do not have the same fixed costs as regulated providers do in order to meet regulatory standards.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

Section 809.94(c) is amended to remove language stating that a parent receiving notification of a provider's corrective action may choose to continue care with the provider if the parent signs the notification acknowledging that the parent is aware of the provider status. The effect of this language is to end the child's care unless the parent signs the notification and acknowledges that the parent chooses to continue care at the facility. Under the CCDBG Act, care cannot end during the 12-month period for a parent's failure to return the acknowledgement to continue care at the facility.

Therefore, §809.94(c) is amended to state that the parent may transfer the child to another provider without being subject to the Board's transfer policies if the parent requests the transfer within 14 business days of receiving the notification.

§809.95. Provider Automated Attendance Agreement

Section 809.95 is amended to clarify that provider misuse of attendance reporting and violation of the requirements in this section are grounds for fraud determination pursuant to Subchapter F of this chapter.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission proposes the following amendments to Subchapter F:

§809.111. General Fraud Fact-Finding Procedures

Under *Program Integrity* on page 80488, the NPRM preamble provided the following clarification regarding the Administration for Children and Families' (ACF) intent regarding fraud and recoupments:

ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child "will be considered to meet all eligibility requirements" for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These proposed changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit Lead Agencies ability to balance these priorities in a way that best meets the needs of children.

Existing regulations at §98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

In accordance with this guidance, §809.111 is amended to provide a definition of fraud in relation to child care services. The amended rule states that a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

--makes a false statement or representation, knowing it to be false; or

--knowingly fails to disclose a material fact.

This definition is consistent with the definition of fraudulently obtaining benefits under Texas Labor Code §214.001.

§809.112. Suspected Fraud

Section 809.112 is amended to clarify specific parental actions that may be grounds for suspected fraud and cause the Board to conduct fact-finding or the Commission to initiate a fraud investigation. These actions include:

--not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

--household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

--work, training, or education hours that would have resulted in ineligibility; or

--not reporting during the 12-month eligibility period:

--changes in income or household composition that would cause the family income to exceed 85 percent SMI (taking into consideration fluctuations of income); or

--a permanent loss of job or cessation of training or education that exceeds 90 days; and

--improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 is amended to remove the provision that a child care contractor may take certain actions if a provider or parent has committed fraud. Although a Board's child care contractor is expected to take these actions, the language implied that the contractor determines which action to take without the involvement of the Board or the Commission.

Amended language in §809.113 clarifies that actions taken against a provider or parent shall be consistent with and pursuant to Commission policy.

Further, §809.113 is amended to include the following options:

--A provider may be prohibited from future eligibility to provide Commission-funded child care services; and

--A parent's eligibility may be terminated during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent.

§809.115. Corrective Adverse Actions

Section 809.115 is amended to remove §809.115(b)(4) to remove termination of child care services as a possible corrective action for parents' noncompliance with this chapter.

§809.116. Recovery of Improper Payments

Section 809.116 is repealed and combined with §809.117.

§809.117. Recovery of Improper Payments to a Provider or Parent

Section 809.117 is amended to clarify the circumstances in which parents are required to repay improper payments. The language clarifies that a parent shall repay improper payments only in the following circumstances:

--Instances involving fraud;

--Instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer; or

--Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.

Section 809.117 is amended to prohibit a parent subject to the repayment provisions above from future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

While we are not concluding any net increase or decrease to the cost of the child care program administered by TWC and Boards as a result of these proposed rules, it is pertinent to take note that there will likely be an impact to the child care program, possibly to somewhat reduce child care operational and administrative costs, somewhat increase the cost of some individual units of child care, and possibly to increase waiting lists for subsidized child care. While these individual impacts cannot easily be quantified at this time, we note that they are necessary due to the enactment of federal statutory revisions and the impending effective date of federal regulations, and not created by these proposed rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with the CCDBG Act, and to provide efficient and effective subsidized child care services that promote both child development and parent workforce participation.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. Agency executive management discussed the policy concept with the Board executive directors during the March 29, 2016, Executive Director Council meeting and Agency staff presented the policy concept to Board staff during the March 29, 2016, workforce forum. During the rulemaking process,

the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is [~~considered to be~~] attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b).

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(6) Child experiencing homelessness--A child who is homeless as defined in the McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.

(7) [~~(6)~~] Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, [~~is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including~~] but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.

(8) [~~(7)~~] Educational program--A program that leads to:

(A) a high school diploma;

(B) a General Educational Development (GED) credential; or

(C) a postsecondary degree from an institution of higher education.

(9) [~~(8)~~] Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.

(10) [~~(9)~~] Household dependent--An individual living in the household who is one of the following:

(A) An adult considered as a dependent of the parent for income tax purposes;

(B) A child of a teen parent; or

(C) A child or other minor living in the household who is the responsibility of the parent.

(11) [~~(10)~~] Improper payments--Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments: [~~Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.~~]

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(12) [~~(11)~~] Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(13) [~~(12)~~] Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(14) [~~(13)~~] Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(15) [~~(14)~~] Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural

parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(16) [~~(15)~~] Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(17) [~~(16)~~] Provider--A provider is defined as:

(A) a regulated child care provider as defined in §809.2(18) [~~§809.2(17)~~];

(B) a relative child care provider as defined in §809.2(19) [~~§809.2(18)~~]; or

(C) a listed family home as defined in §809.2(13) [~~§809.2(12)~~], subject to the requirements in §809.91(b).

(18) [~~(17)~~] Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by DFPS;

(B) registered with DFPS; or

[~~(C) licensed by the Texas Department of State Health Services as a youth day camp; or~~]

(C) [~~(D)~~] operated and monitored by the United States military services.

(19) [~~(18)~~] Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

(E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

(20) [~~(19)~~] Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.

(21) [~~(20)~~] Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(22) [~~(21)~~] Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(23) [~~(22)~~] Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

(A) 2-Star Program Provider;

(B) 3-Star Program Provider; or

(C) 4-Star Program Provider.

(24) [~~(23)~~] Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

[~~(B) job search activities (subject to the requirements in §809.41(d)); or~~]

(B) [~~(C)~~] participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 3, 2016.

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Texas Workforce Commission
Earliest possible date of adoption: July 17, 2016
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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.13, 809.15 - 809.17, 809.19, 809.20

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.13. Board Policies for Child Care Services.

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

[~~(c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.~~]

(c) [~~(d)~~] At a minimum, a Board shall develop policies related to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);

(2) maintenance of a waiting list as described in §809.18(b);

(3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;

(4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers that offer transportation;

(5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

(6) provision of child care services to a child with disabilities under [~~up to~~] the age of 19 as described in §809.41(a)(1)(B);

(7) minimum activity requirements for parents as described in §809.48 and §809.50;

(8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);

[~~(9) frequency of eligibility redetermination as described in §809.42(b)(2);~~]

(9) [~~(10)~~] Board priority groups as described in §809.43(a);

(10) [~~(11)~~] transfer of a child from one provider to another as described in §809.71(3);

[~~(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;~~]

[~~(13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);~~]

(11) [~~(14)~~] providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);

(12) [~~(15)~~] procedures for fraud fact-finding as provided in §809.111; and

[~~(16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(e);~~]

[~~(17) mandatory waiting period for reapplying or being placed on the waiting list for child care services as described in §809.55; and~~]

(13) [~~(18)~~] policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) - (e).

§809.15. Promoting Consumer Education.

(a) A Board shall promote informed child care choices by providing consumer education information to:

(1) parents who are eligible for child care services;

(2) parents who are placed on a Board's waiting list;

(3) parents who are no longer eligible for child care services; and

(4) applicants who are not eligible for child care services.

(b) The consumer education information, including consumer education information provided through a Board's website, shall contain, at a minimum:

(1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;

(2) the website and telephone number of DFPS, so parents may obtain health and safety requirements including information on:

(A) the prevention and control of infectious diseases (including immunizations);

(B) building and physical premises safety;

(C) minimum health and safety training appropriate to the provider setting; and

(D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.91; and

(4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

(A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code §2308.315; and

[~~(B) the school readiness certification system, pursuant to Texas Education Code §29.161; and~~]

(B) [~~(C)~~] integrated school readiness models, pursuant to Texas Education Code §29.160; [~~and~~]

(5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171;[~~.~~]

(6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

(A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and

(B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.; and

(7) a link to the Agency's designated child care consumer education website.

(c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR Part 98. [~~§98.51. These activities may include, but are not limited to:~~]

[~~(1) activities designed to provide comprehensive consumer education to parents and the public;~~]

[~~(2) activities that increase parental choice; and~~]

[~~(3) activities designed to improve the quality and availability of child care.~~]

(b) Boards must ensure compliance with 45 CFR Part 98 [~~§98.54(b)~~] regarding construction expenditures, as follows:

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR Part 98 [~~§98.41~~].

(c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR Part 98 [~~§98.51~~].

§809.17. Leveraging Local Resources.

(a) Leveraging Local Funds.

(1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.

(2) A Board is encouraged to secure additional local funds in excess of the amount required to match federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.

(3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) The Commission accepts the following as local match:

(1) Funds from a private entity that:

(A) are donated without restrictions that require their use for:

(i) a specific individual, organization, facility, or institution; or

(ii) an activity not included in the CCDF State Plan or allowed under this chapter;

(B) do not revert back to the donor's facility or use;

(C) are not used to match other federal funds; and

(D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A) - (C) of this paragraph.

(2) Funds from a public entity that:

(A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(3) Expenditures by a public entity certifying that the expenditures:

(A) are for an activity included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3), determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:

(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and

(2) resides with:

(A) a family whose income does not exceed 85 percent of the state median income for a family of the same size; and

(B) a parent who requires child care in order to work or attend a job training or educational program.

(d) [~~(c)~~] A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

(e) [~~(d)~~] Completing Private Donations, Public Transfers, and Public Certifications.

(1) A Board shall ensure that:

(A) private donations of cash and public transfers of funds are paid to the Commission; and

(B) public certifications are submitted to the Commission.

(2) Private donations and public transfers are considered complete when the funds have been received by the Commission.

(3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.

(f) [~~(e)~~] A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the:

(i) number of children in care; and

(ii) parent selection of a TRS-certified provider;

(C) being assessed only at the following times:

(i) Initial eligibility determination;

(ii) 12-month eligibility redetermination;

(iii) upon the addition of a child in care that would result in an additional amount for the child; and

(iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment.

[~~(C) not exceeding the Board's maximum reimbursement rate or the provider's published rate, whichever is lower.~~]

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices;

(B) Parents who are participating in SNAP E&T services;

(C) Parents of a child experiencing homelessness as defined in §809.2; or

(D) [~~(C)~~] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c)(1), unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 [~~§809.2(8)~~].

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

(e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;

(B) Licensed child care homes as defined by DFPS;

(C) Registered child care homes as defined by DFPS; and

(D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at TRS provider facilities; and

[~~(2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and~~]

(2) [~~(3)~~] only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The [~~Effective September 1, 2015, the~~] maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsection (b)(2) [~~subsections (b)(2) or (b)(3)~~] of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point [~~percent~~] difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.41 - 809.54

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. A Child's General Eligibility for Child Care Services.

(a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, at the time of eligibility determination or redetermination, a Board shall ensure that the child:

(1) meets one of the following age requirements:

(A) be under 13 years of age; or

(B) at the option of the Board, be a child with disabilities under 19 years of age;

(2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and

(3) resides with:

(A) a family within the Board's workforce area:

(i) whose income does not exceed the income limit established by the Board, which income limit must not exceed 85[%] percent of the state median income (SMI) for a family of the same size; and

(ii) whose assets do not exceed $1,000,000 as certified by a family member; or

(iii) that meets the definition of experiencing homelessness as defined in §809.2.

(B) parents who require child care in order to work or attend a job training or educational program; or

(C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.

(b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.

(c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

[~~(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:~~]

[~~(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.~~]

[~~(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.~~]

(d) [~~(e)~~] A Board may establish a policy to allow parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child as defined in §809.2.

(e) Boards that establish initial family income eligibility at a level less than 85 percent SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit.

§809.42. Eligibility Verification, Determination, and Redetermination [~~Verification~~].

(a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.

(b) A Board shall ensure that eligibility [~~Eligibility~~] for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.[~~:~~]

[~~(1) any time there is a change in family income or other information that could affect eligibility to receive child care services; and~~]

[~~(2) on an established frequency at the Board's discretion.~~]

[~~(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:~~]

[~~(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and~~]

[~~(2) resides with:~~]

[~~(A) a family whose income does not exceed 85% of the state median income for a family of the same size; and~~]

[~~(B) a parent who requires child care in order to work or attend a job training or educational program.~~]

§809.43. Priority for Child Care Services.

(a) A Board shall ensure that child care services are prioritized among the following three priority groups:

(1) The first priority group is assured child care services and includes children of parents eligible for the following:

(A) Choices child care as referenced in §809.45;

(B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;

(C) SNAP E&T child care as referenced in §809.47; and

(D) Transitional child care as referenced in §809.48.

(2) The second priority group is served subject to the availability of funds and includes, in the order of priority:

(A) children who need to receive protective services child care as referenced in §809.49;

(B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;

(C) children of a foster youth as defined in §801.23 of this title;

(D) children experiencing homelessness as defined in §809.2 and described in §809.52;

(E) [~~(D)~~] children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;

(F) [~~(E)~~] children of teen parents as defined in §809.2; and

(G) [~~(F)~~] children with disabilities as defined in §809.2.

(3) The third priority group includes any other priority adopted by the Board.

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

(a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:

(1) take into account irregular fluctuations in earnings; and

(2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI do not affect eligibility or parent share of cost.

[~~(a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility and the parent share of cost means the monthly total of the following items for each member of the family (as defined in §809.2(8)):~~]

[~~(1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.~~]

[~~(2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.~~]

[~~(3) Pensions, annuities, life insurance, and retirement income, and early withdrawals from a 401(k) plan not rolled over within 60 days of withdrawal. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.~~]

[~~(4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.~~]

[~~(5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.~~]

[~~(6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).~~]

[~~(7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.~~]

[~~(8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.~~]

[~~(9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.~~]

[~~(10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.~~]

[~~(11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.~~]

[~~(12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits, if the court settlement or judgment clearly allocates damages among these categories.~~]

[~~(13) Lottery payments of $600 or greater.~~]

(b) In accordance with Commission income calculation guidelines, Boards shall ensure that the following income sources are excluded from the family income: [~~Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:~~]

(1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;

(2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

(3) Needs-based educational [~~Educational~~] scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;

[~~(4) Earned Income Tax Credit (EITC) and the Advanced EITC;~~]

(4) [~~(5)~~] Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

(5) [~~(6)~~] Onetime cash payments, including tax [~~Tax~~] refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;

(6) [~~(7)~~] VISTA and AmeriCorps living allowances and stipends;

(7) [~~(8)~~] Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;

(8) [~~(9)~~] Foster care payments and adoption assistance;

(9) [~~(10)~~] Special military pay or allowances, including [~~which include~~] subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

(10) [~~(11)~~] Income from a child in the household between 14 and 19 years of age who is attending school;

(11) [~~(12)~~] Early [~~401(k)~~] withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS); [~~and~~]

(12) Unemployment compensation;

(13) Child support payments;

(14) Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;

(15) Onetime income received in lieu of TANF cash assistance;

(16) Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

(17) Regular payments from Social Security, such as Old-Age and Survivors Insurance Trust Fund;

(18) Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);

(19) Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and

(20) [~~(13)~~] Any income sources specifically excluded by federal law or regulation.

(c) Income that is not listed in subsection (b) of this section as excluded from income is included as income.

§809.45. Choices Child Care.

(a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.

(b) For a parent receiving Choices Child Care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that:

(1) child care continues for the three-month period pursuant to §809.51; and

(2) the provisions of §809.51 shall apply if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period.

[~~(b) A parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may be eligible for up to two weeks of child care services if:~~]

[~~(1) child care services will prevent loss of the Choices placement; and~~]

[~~(2) child care is available to meet the needs of the child and parent.~~]

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

(a) A parent is eligible for TANF Applicant child care if the parent:

(1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);

(2) locates employment or has increased earnings prior to TANF certification; and

(3) needs child care to accept or retain employment.

(b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.

[~~(c) Subject to the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §809.50, whichever occurs first.~~]

[~~(d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.~~]

[~~(e) A parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §809.50.~~]

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care.

(a) A parent is eligible to receive SNAP E&T child care services if the parent is participating in SNAP E&T services, in accordance with the provisions of 7 CFR Part 273[~~, as long as the case remains open~~].

(b) For a parent receiving SNAP E&T child care services who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that:

(1) child care continues for the three-month period pursuant to §809.51; and

(2) the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

§809.48. Transitional Child Care.

(a) A parent is eligible for Transitional child care services if the parent:

(1) has been denied TANF and was employed at the time of TANF denial; or

(2) has been denied TANF within 30 days because of expiration of TANF time limits; and

(3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25

hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85[~~%~~] percent of the state median income for a family of the same size.

(c) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:

(1) a period of up to 12 months from the effective date of the TANF denial; or

(2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.

[~~(d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.~~]

[~~(e) Former TANF recipients who are not employed when TANF is denied, are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of receipt of child support shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board.~~]

(d) [~~(f)~~] A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.

(e) [~~(g)~~] For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:

(1) each credit hour of postsecondary education counts as three hours of education activity per week; and

(2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week.

§809.49. Child Care for Children Receiving or Needing Protective Services.

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.

(1) Child care will continue as long as authorized and funded by DFPS.

(2) DFPS may authorize child care for a child under court supervision under the [~~up to~~] age of 19.

(3) Child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.

(b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director or other individual with an ownership interest in the provider.

§809.50. At-Risk Child Care.

(a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility redetermination as described in §809.42:

(1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(2)(A); and

(2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.

(b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:

(1) each credit hour of postsecondary education counts as three hours of education activity per week;

(2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and

(3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.

(d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.

(e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed 85[~~%~~] percent of the state median income for a family of the same size.

(f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2[~~(8)~~].

(g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85[%] percent of the state median income for a family of the same size.

§809.51. Child Care during [~~Temporary~~] Interruptions in Work, Education, or Job Training.

(a) Except for a child experiencing homelessness, as described in §809.52, if the child met all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42, regardless of any:

(1) change in family income, if that family income does not exceed 85 percent SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or break for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b), then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of the SMI; and

(B) the resumption of work or attendance at a job training or education program.

[~~(a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.~~]

[~~(b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:~~]

[~~(1) Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and~~]

[~~(2) Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.~~]

[~~(c) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.~~]

[~~(d) Prior to any suspension of child care as described in this section, a parent must provide:~~]

[~~(1) documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation; or~~]

[~~(2) written notification to the child care contractor of the parent's intent to enroll in an educational institution following the temporary cessation of educational activities.~~]

§809.52. Child Care for Children Experiencing Homelessness.

(a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure that the child is initially enrolled for a period of three months.

(b) If, during the three-month initial enrollment period, the parent of a child experiencing homelessness:

(1) is unable to provide documentation verifying that the child is eligible under §809.41(a)(1) - (2) (regarding age and citizenship status), then care shall be discontinued following the three-month enrollment period; or

(2) provides documentation verifying eligibility under §809.41(a), then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

§809.53. Child Care for Children Served by Special Projects.

(a) Special projects developed in federal and state statutes or regulations and funded using non-CCDF sources may add groups of children eligible to receive child care.

(b) The eligibility criteria as stated in the statutes, [~~or~~] regulations, or funding sources shall control for the special project, unless otherwise indicated by the Commission.

(c) The time limit for receiving child care for children served by special projects may be:

(1) specifically prescribed by federal or state statutes or regulations according to the particular project;

(2) otherwise set by the Commission depending on the purpose and goals of the special project; and

(3) limited to the availability of funds.

§809.54. Continuity of Care.

(a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care through the end of the applicable eligibility periods described in §809.42 [~~as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section~~].

(b) Except as provided by §809.75(b) relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care[~~, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group as provided in §809.43~~].

(c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by DFPS, child care shall continue through the end of the applicable eligibility periods described in §809.42 using funds allocated to the Board by the Commission. [~~the following shall apply:~~]

[~~(1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.~~]

[~~(2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.~~]

(d) A Board shall ensure that no enrolled children of military parents in military deployment have a disruption of child care services or eligibility during [~~because of the~~] military deployment, including parents in military deployment at the end of the 12-month eligibility redetermination period.

(e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

[~~(f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.~~]

[~~(g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.~~]

[~~(h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 475-0829

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40 TAC §809.55

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.55. Mandatory Waiting Period for Reapplication.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.75

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parent Rights.

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

(1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;

(2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;

(4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine or redetermine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification[~~, except as provided by paragraph (10) of this section,~~] at least 15 days before [~~the the denial, delay, reduction, or~~] termination of child care services; [~~unless:~~]

[~~(A) the services are authorized to cease immediately because either the parent is no longer participating in the Choices or SNAP E&T program or services are authorized to end immediately for children in protective services child care; or~~]

[~~(B) the services are authorized to cease immediately as required by Board policy because the child has been absent for five consecutive authorized days of care and the parent has failed to contact~~

~~the child care provider or the child care contractor by the end of the fifth authorized day;~~]

[~~(10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:~~]

[~~(A) Written notification of denial, delay, reduction, or termination shall include information regarding other child care options for which the recipient may be eligible.~~]

[~~(B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;~~]

(10) [~~(11)~~] reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

(11) [~~(12)~~] be informed of the possible consequences of rejecting or ending the child care that is offered;

(12) [~~(13)~~] be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

(13) [~~(14)~~] be informed of the parent appeal rights described in §809.74; and

[~~(15) be informed of the Board's attendance policy as required in §809.13(d)(13) and the consequences for five consecutive absences without contact as described in paragraph (9)(B) of this section; and~~]

(14) [~~(16)~~] be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

§809.72. Parent Eligibility Documentation Requirements.

(a) Except for a child experiencing homelessness pursuant to §809.52 at initial eligibility, before a child can be initially determined or redetermined eligible for child care services and care authorized, parents [~~Parents~~] shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.

(b) A parent's failure to submit eligibility documentation shall [~~may~~] result in initial denial [~~or termination~~] of child care services or termination of services at the 12-month eligibility redetermination period.

§809.73. Parent Reporting Requirements.

(a) Boards shall ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

(b) [~~(a)~~] Pursuant to subsection (a) of this section, parents [~~Parents~~] shall report to the child care contractor, within 14 calendar [~~10~~] days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

[~~(2) Changes in family size;~~]

(2) [~~(3)~~] Changes in work or attendance at [~~in~~] a job training or educational program not considered to be temporary changes, as described in §809.42; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

[~~(4) The receipt or the awarding of any child care funds from other public or private entities; or~~]

[~~(5) Any other changes that may affect the child's eligibility or parent share of cost for child care.~~]

(c) [~~(b)~~] Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.[~~:~~]

[~~(1) termination of child care;~~]

[~~(2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or~~]

[~~(3) fact-finding for suspected fraud as described in Subchapter F of this chapter.~~]

(d) A Board shall allow parents to report and the child care contractor shall take appropriate action regarding changes in:

(1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

[~~(c) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.~~]

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title:[~~,~~]

(1) if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or SNAP E&T caseworker; or[~~.~~]

(2) regarding the amount of recoupment determined pursuant to Subchapter F of this chapter.

(b) A parent may have an individual represent him or her during this process.

(c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

§809.75. Child Care during Appeal.

(a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

[~~(b) A Board shall ensure that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated because of:~~]

[~~(1) excessive absences;~~]

[~~(2) voluntary withdrawal from child care;~~]

[~~(3) change in federal or state laws or regulations that affect the parent's eligibility;~~]

[~~(4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;~~]

[~~(5) a sanctions finding against the parent participating in the Choices program;~~]

[(6) voluntary withdrawal of a parent from the Choices program;]

[(7) nonpayment of parent share of cost;]

[(8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care;]

[(9) a suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training); or]

[(10) five consecutive absences and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day.]

(b) [(c)] The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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40 TAC §809.76, §809.77

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.76. Parent Responsibility Agreement.

§809.77. Exemptions from the Parent Responsibility Agreement.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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40 TAC §809.78

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.78. [Parent] Attendance Standards and Reporting Requirements.

(a) A Board shall ensure that parents are notified of the following:

(1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment. Failure to meet attendance standards described in paragraph (2) of this subsection may:

(A) result in suspension of care; or

(B) be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

(2) Meeting attendance standards for child care services consists of fewer than:

(A) five consecutive absences during the month;

(B) ten total absences during the month; or

(C) forty-one total absences over a 12-month period.

(3) Child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(4) [(1)] Parents shall use the attendance card to report daily attendance and absences.

[(2) Child care services may be terminated and parents may be held responsible for paying the provider for attendance and absences that are not reimbursed by the Board.]

(5) [(3)] Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.

(6) [(4)] Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

(7) [(5)] Parents shall:

(A) ensure the attendance card is not misused by secondary cardholders;

(B) inform secondary cardholders of the responsibilities for using the attendance card;

(C) ensure that secondary cardholders comply with these responsibilities; and

(D) ensure the protection of attendance cards issued to them or secondary cardholders.

(8) [(6)] The [Child care services may be terminated if the] parent or secondary cardholders giving [give] the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

(9) [(7)] Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child

care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an absence counted toward the attendance standards described in paragraph (2) of this subsection [~~Board's maximum number of allowable absences or the parent being liable for the reimbursement to the provider~~].

[~~(8) Five consecutive absences on authorized days of care, with no contact from the parent with the child care provider or child care contractor, may result in termination of child care services. Additionally, the 15-day notice of termination is not required in this circumstance, and child care shall not continue during any appeal.~~]

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the [~~parent~~] attendance standards and reporting requirements [~~card responsibilities,~~] at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, [~~conducted at a frequency determined by the Board,~~] as required in §809.42(b) [~~§809.42(b)(2)~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91 - 809.95

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2 [~~§809.2(17)~~];

(2) relative child care providers as described in §809.2 [~~§809.2(18)~~], subject to the requirements in subsection (e) of this section;

(3) at the Board's option, listed family homes as defined in §809.2 [~~§809.2(12)~~], subject to the requirements in subsection (b)(2) of this section; or

(4) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) [~~For providers listed with DFPS, the following applies:~~]

[~~(1)~~] A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.

[~~(2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 CFR §98.41, the requirements shall include:~~]

[~~(A) The prevention and control of infectious diseases (including immunizations);~~]

[~~(B) building and physical premises safety; and~~]

[~~(C) minimum health and safety training appropriate to the child care setting.~~]

(c) Except as provided by the criteria for TRS Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a) and subsection (b)(2) of this section.

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2 [~~§809.2(6)~~], and his or her siblings;

(B) A child under 18 months of age, and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed [~~Licensed~~] child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95, the[~~,~~] Board, or, if applicable, the Board's child care contractor. [~~At a minimum, the provider shall:~~]

[~~(A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;~~]

[~~(B) inform the Board's child care contractor when an enrolled child is absent; and~~]

[~~(C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.~~]

(c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:

(1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or

(2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).

(d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

(e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(f) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization.

(c) [~~(b)~~] A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) [~~(c)~~] A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) [~~(d)~~] A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) [~~(e)~~] Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(g) [~~(f)~~] A Board or its child care contractor shall ensure that providers are not paid for holding spaces open [~~except as consistent with attendance policies as established by the Board~~].

(h) [~~(g)~~] A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(i) [~~(h)~~] The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j) [~~(i)~~] A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (f) [~~subsection (e)~~] of this section.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services.

(a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and

(2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.

(b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:

(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and

(2) no new referrals are made to the provider while on probationary status.

(c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3) [~~choose to continue the enrollment of a child with the provider~~] if the parent requests the transfer within 14 [~~signs and returns to the Board's child care contractor within 10~~] business days of receiving such notification [~~a written acknowledgment that the parent is aware of the provider's status with DFPS, but chooses to enroll the child with the provider~~].

(d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.

(e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;

(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider; and

(3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.

(f) For adverse actions in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns DFPS' determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (e) of this section.

§809.95. Provider Automated Attendance Agreement.

Boards shall notify providers of the following:

(1) Employees of child care providers shall not:

(A) possess, have on the premises, or otherwise have access to the attendance card of a parent or secondary cardholder;

(B) accept or use the attendance card or PIN of a parent or secondary cardholder; or

(C) perform the attendance or absence reporting function on behalf of the parent;

(2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;

(3) Providers shall report misuse of attendance cards and PINs to the Board or the Board's child care contractor; and

(4) Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may result in withholding payment to the provider.

(5) Misuse of attendance reporting and violation of the requirements in this section are grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 3, 2016.

TRD-201602831
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 475-0829

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

40 TAC §§809.111 - 809.113, 809.115

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.111. General Fraud Fact-Finding Procedures.

(a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

(c) [~~(b)~~] A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

(d) [~~(c)~~] These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.

(e) [~~(d)~~] Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state

level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

(d) [~~(c)~~] The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

(a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

(D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

(1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

(A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

(B) work, training, or education hours that would have resulted in ineligibility; or

(2) Not reporting during the 12-month eligibility period:

(A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or

(B) a permanent loss of job or cessation of training or education that exceeds 90 days; and

(C) improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud.

(a) The Commission or Board[~~, Board, or Boards child care contractor~~] may take the following actions pursuant to Commission policy if the Commission or Board finds that a provider has committed fraud:

(1) Temporary withholding of payments to the provider for child care services delivered;

(2) Nonpayment of child care services delivered;

(3) Recoupment of funds from the provider;

(4) Stop authorizing care at the provider's facility or location;

(5) Prohibiting future eligibility to provide Commission-funded child care services; or

(6) [~~(5)~~] Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

(b) The Commission or Board[~~, Board, or Boards child care contractor~~] may take the following actions pursuant to Commission policy if the Commission or Board finds that a parent has committed fraud:

(1) recouping funds from the parent;

(2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care;

(3) limiting the enrollment of the parent's child to a regulated child care provider;

(4) terminating care during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent; or

(5) [~~(4)~~] any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.115. Corrective Adverse Actions.

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

(1) the scope of the violation;

(2) the severity of the violation; and

(3) the compliance history of the person or entity.

(b) Corrective actions for providers may include, but are not limited to, the following:

(1) Closing intake;

(2) Moving children to another provider selected by the parent;

(3) Withholding provider payments or reimbursement of costs incurred; and

[~~(4) Termination of child care services; and~~]

(4) [~~(5)~~] Recoupment of funds.

(c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

(1) The basis for the Service Improvement Agreement;

(2) The steps required to reach compliance including, if applicable, technical assistance;

(3) The time limits for implementing the improvements; and

(4) The consequences of noncompliance with the Service Improvement Agreement.

(d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider:

(1) possesses, or has on the premises, attendance cards without the parent being present at the provider site;[:]

(2) accepts or uses an attendance card or PIN of a parent or secondary cardholder; or

(3) performs the attendance reporting function on behalf of a parent.

(e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent or parent's secondary cardholder gives his or her:

(1) card to a provider; or

(2) PIN to a provider.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 3, 2016.

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Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: July 17, 2016
For further information, please call: (512) 475-0829

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40 TAC §809.116

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.116. Recovery of Improper Payments.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 3, 2016.

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Patricia Gonzalez
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Texas Workforce Commission
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For further information, please call: (512) 475-0829

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40 TAC §809.117

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.117. Recovery of Improper Payments to a Provider or Parent.

(a) A Board shall attempt recovery of all improper payments as defined in §809.2.

(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

(c) [~~(a)~~] The provider shall repay improper payments for child care services received in the following circumstances:

(1) Instances involving fraud;

(2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;

(3) Instances in which the provider was paid for the child care services from another source;

(4) Instances in which the provider did not deliver the child care services;

(5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and

(6) Other instances when repayment is deemed an appropriate action.

(d) [~~(b)~~] A parent shall repay improper payments for child care only in the following circumstances:

(1) Instances involving fraud as defined in this subchapter [~~chapter~~];

(2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

(3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost. [~~Other instances in which repayment is deemed an appropriate corrective action.~~]

(e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the prepayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Patricia Gonzalez
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Texas Workforce Commission
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For further information, please call: (512) 475-0829

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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 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22

The Texas Board of Architectural Examiners withdraws proposed amendments to §1.22 which appeared in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2572).

Filed with the Office of the Secretary of State on May 31, 2016.

TRD-201602732
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: May 31, 2016
For further information, please call: (512) 305-8519

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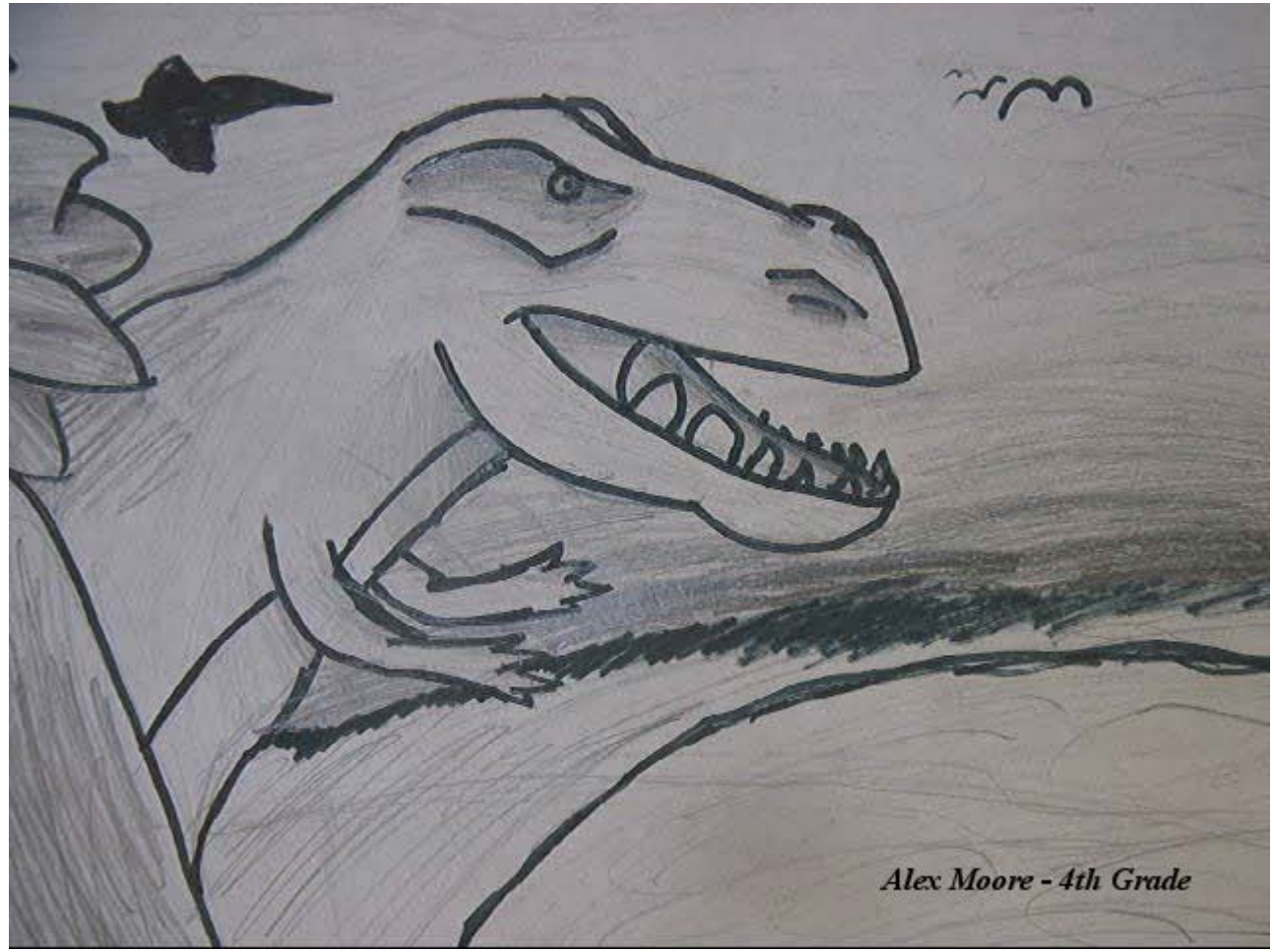
Alex Moore - 4th Grade

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.7

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rules §8.7, regarding the contents of a request for an advisory opinion. The amendment is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3023) and will not be republished.

Any person who is subject to a law within the commission's jurisdiction can submit a written advisory opinion request to the commission that asks how that law applies to their circumstances. In order to obtain an opinion, the requestor must first show that they have standing to request the opinion. The amendment requires any advisory opinion request to disclose the requestor's identity so that the commission can confirm that the requestor has standing to request the opinion. State law requires the name of a requestor to be confidential (unless waived), and the amendment does not affect that requirement.

Public Comment

Mr. Trey Trainor verbally addressed the commission during the commission's public meeting held on June 1, 2016, and spoke in opposition to the proposed amendment, stating that the identity of a requestor should not be required to be disclosed in an advisory opinion request. The commission did not agree with the comments and adopted the rule to further the determination of standing and the equal treatment of requestors in the advisory opinion request process. Additionally, the commission maintains the required confidentiality of any person requesting an advisory opinion and decisions made in the advisory opinion process are not based upon the identity of a requestor.

The amendment to §8.7 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §8.7 affects Subchapter D, Chapter 571, of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

TRD-201602820

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: June 22, 2016
Proposal publication date: April 29, 2016
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rules §20.1, by adding a definition for "school district." The amendment is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3023) and will not be republished.

In the 2015 session, the Texas Legislature passed House Bill 1114 requiring a specific-purpose committee (SPAC) "created to support or oppose a measure on the issuance of bonds by a school district" to file campaign finance reports with the commission instead of the district. Those SPACs must now file a campaign treasurer appointment with the respective district and all campaign finance reports with the commission. Title 15 of the Election Code does not define the term "school district." Section 130.122, Education Code, and article VII, section 3, of the Texas Constitution indicate that a court would likely consider a junior college district or community college district to be a "school district" for purposes of the requirement that an SPAC supporting or opposing a bond issued by a "school district" file its reports with the commission.

No comments were received regarding the proposed amendment.

The amendment to §20.1 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.1 affects Title 15 of the Texas Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201602821

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: June 22, 2016
Proposal publication date: April 29, 2016
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.5

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rules §34.5, regarding whether compensation received for certain activities does not require a person to register as a lobbyist. The rule is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3024) and will not be republished.

Section 305.003 of the Texas Government Code requires, in part, a person to register when the person exceeds $1,000 in a calendar quarter to lobby a member of the legislative or executive branch to influence legislation or administrative action. A person is also required to register when the person's compensation exceeds $1,000 in a calendar quarter and the person makes such communications as part of their regular employment. When calculating the amount of compensation a person receives, commission rule §34.5 excludes compensation received for certain types of activities listed in the rule.

The amendment clarifies that rule §34.5 means that a person does not have to register if their only lobby activity is receiving compensation for certain listed activities. If a person has other activities that are not exempt, and the person exceeds the compensation or expenditure threshold, then registration and reporting of all compensation for lobbying is required, unless that activity is exempt from disclosure by other law. Additionally, if a person chooses to register when registration is not required, then the person must report their lobby compensation, even if it is for activities listed in rule §34.5.

No comments were received regarding the proposed amendment.

The amendment to §34.5 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §34.5 affects Chapter 305 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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Proposal publication date: April 29, 2016
For further information, please call: (512) 463-5800

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1 TAC §34.14

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rules §34.14, regarding Expenditures for Fact-Finding Trips. The rule is adopted with changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3025) and will be republished. The change to the proposed text was nonsubstantive.

Section 34.14 relates to when an expenditure for transportation or lodging provided by a lobbyist to a member of the legislative or executive branch would be for a fact-finding trip. Section 305.024 of the Texas Government Code restricts travel expenditures by lobbyists for members of the legislative and executive branches. However, §305.025(4) permits a lobbyist to provide, in part, "necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips." The adopted rule §34.14 provides clarity on what constitutes a fact-finding trip and how to disclose the purpose of such an expenditure on a lobby activities report when detailed itemization is required.

No written comments were received regarding the proposed new rule. However, Jack Gullahorn, of Jack W. Gullahorn, P.C., verbally addressed the commission during the commission's public meeting held on June 1, 2016. Mr. Gullahorn spoke in opposition to the proposed rule and suggested in §34.14(a)(2) the addition of the word "reasonably" and the substitution of the words "can not" for "cannot," which was suggested as unclear. The commission agreed with the addition of "reasonably" but disagreed that the word "cannot" is unclear.

The new rule, §34.14, is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adopted new rule, §34.14, affects Chapter 305 of the Government Code.

§34.14. Expenditures for Fact-Finding Trips

(a) For purposes of §305.025(3), Government Code, an expenditure for transportation or lodging provided to a member of the legislative or executive branch is for a fact-finding trip only if:

(1) the expenditure is necessary for the member to obtain information that directly relates to the member's official duties;

(2) the member cannot reasonably obtain the information without the expenditure; and

(3) the expenditure is not for the member's attendance at a merely ceremonial event or pleasure trip.

(b) If an expenditure made for transportation or lodging for a fact-finding trip is required to be disclosed on a lobby activities report by §305.0061(a), Government Code, the purpose of the transportation or lodging must include a description of the information that the expenditure was necessary to obtain under subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
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CHAPTER 46. DISCLOSURE OF INTERESTED PARTIES

1 TAC §46.3

The Texas Ethics Commission (the commission) adopts amendments to Texas Ethics Commission Rules §46.3, regarding definitions related to §2252.908, Texas Government Code. The rule is adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3026) and will not be republished.

House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code, to require a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Section 46.3 defines relevant terms used in §2252.908. Since the adoption of §46.3, the commission has received numerous inquiries regarding the definitions of several terms related to §2252.908 and the amendments are intended to address some of those concerns and to further the intent of §2252.908. The amendments change the definitions of "contract," "controlling interest," and "intermediary" and add definitions for the terms "signed" and "value."

Section 46.1 of the commission's rules provides that the disclosure requirement applies to contracts that meet either of the following conditions: (1) requires an action or vote by the governing body of the entity or agency; or (2) the value of the contract is at least $1 million. The definition of "value" of a contract is added to clarify that the value of a contract is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract.

The definition of "contract" is amended to mean a contract between a governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, whichever is earlier. The term includes an amended, extended, or renewed contract, which is unchanged by the amendments.

The definition of "controlling interest" is amended to provide that service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers, would not constitute a controlling interest if the officer is an officer of a publicly held business entity or its wholly owned subsidiary.

The definition of "intermediary" is amended to exclude an employee of an entity with a controlling interest in the business entity.

The definition of "signed" is added, providing that the term includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

Public Comment

The Independent Bankers Association of Texas submitted written comments in support of the amendments to §46.3(c)(3) and §46.3(g) and suggested the addition of the word "written" before the term "contract." The comments also suggested an additional amendment to the definition of "value" and an exception in the definition of "interested party" for bank officers.

The Texas Municipal League submitted written comments against the amendment to the term "contract" and suggesting an additional amendment to the definition of "contract."

The Associated General Contractors of Texas submitted written comments requesting that the definition of "contract" be amended to require the submission of a disclosure under §2252.908 ("Form 1295") to be required only at the initial execution of a contract. The comments also requested that the rules allow Form 1295 to be filed by certain electronic methods and proposing an alternative filing through qualification.

The commission did not determine that the suggested amendments were necessary to implement §2252.908. The commission determined that the amendments, as proposed by the commission, were consistent with the statutory language in §2252.908.

The amendments to §46.3 are adopted under Texas Government Code §2252.908(g), which requires and authorizes the commission to adopt rules necessary to implement §2252.908 of the Texas Government Code.

The amendments to §46.3 affect §2252.908 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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1 TAC §46.5

The Texas Ethics Commission (the commission) adopts amendments to Texas Ethics Commission Rules §46.5, relating to §2252.908 of the Texas Government Code, to clarify that a description of a contract includes property other than services or goods and to amend the timing of a notification to the commission of a receipt of a completed disclosure form and certification of filing. The rules are adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3027) and will not be republished.

House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code, to require a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state

agency. Section 46.5 is amended to provide guidance on the proper completion of the disclosure ("Form 1295"), which the commission adopted on October 5, 2015, and revised on April 8, 2016, to be used by business entities to disclose interested parties in accordance with §2252.908. Section 46.5 also provides the manner in which a governmental entity or state agency shall notify the commission of the receipt of filings under the rule and the manner in which the commission shall make the disclosure of interested parties form available on the commission's Internet website.

The amendments to §46.5(a)(4) change the phrase "goods or services" to "services, goods, or other property" to ensure that contracts regarding real estate are covered by the disclosure requirement. Further, the rule previously required a governmental entity to notify the commission that it had received a completed disclosure of interested parties form and certification of filing not later than the 30th day after the date the contract was binding. The amendment to §46.5(c) changes the notification deadline to the 30th day after the date the governmental entity or state agency receives the disclosure, in order to more closely track the language of §2252.908.

Public Comment

The Texas Municipal League submitted written comments agreeing with the proposed amendment to §46.5(c) and suggested an amendment to provide that a governmental entity or state agency is deemed to have received a disclosure under §2252.908(f) when all parties are bound to the contract. The commission did not agree with the suggestion and determined that the language in the amendment, as proposed by the commission, is more consistent with the statutory language of §2252.908. The comments also requested an amendment to certain language included in Form 1295, which is a form adopted separately from rule amendments.

Allen Boone Humphries Robinson LLP of Austin, Texas also submitted written comments on the proposed amendments. The comments partially agreed with the amendment to §46.5(c), but suggested that the rule be amended to apply to a "required completed disclosure." The commission did not agree with the suggestion, as the language in the amendment, as proposed by the commission, is more consistent with the statutory language of §2252.908.

The amendments to §46.5 are adopted under Texas Government Code §2252.908(g), which requires and authorizes the commission to adopt rules necessary to implement Texas Government Code §2252.908.

The amendments to §46.5 affect §2252.908 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

The Texas Health and Human Services Commission (HHSC) adopts new Subchapter A, concerning General Provisions, to include all rules currently in Chapter 351, except §351.3. HHSC adopts amendments to §351.2, concerning Petition for the Adoption of a Rule; the repeal of §351.3, concerning Purpose, Task and Duration of Advisory Committees; and new Subchapter B, concerning Advisory Committees, §§351.801, 351.803, 351.805, 351.807, 351.809, 351.811, 351.813, 351.815, 351.817, 351.819, 351.821, 351.823, 351.825, 351.827, 351.829, 351.831, 351.833, 351.835, and 351.837. Sections 351.2, 351.3, 351.801, 351.803, 351.807, 351.809, 351.811, 351.813, 351.815, 351.817, 351.819, 351.821, 351.823, 351.825, 351.829, 351.831, 351.833, 351.835, and 351.837 are adopted without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2641) and will not be republished. Section 351.805 and §351.827 are adopted with changes and will be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200 and S.B. 277, 84th Legislature, Regular Session, 2015, removed 38 advisory committees from statute and authorized the HHSC Executive Commissioner to reestablish committees in rule. As part of implementing this directive, HHSC evaluated the ongoing need for each advisory committee and requested stakeholder feedback. After the HHSC Executive Commissioner reviewed this information and made final decisions, HHSC published a list of committees that were either consolidated in some way, continued as they are currently, or discontinued. The list of committees that will be continued was posted in the *Texas Register* on October 30, 2015 (40 TexReg 7726). The adopted new rules include a new rule for each committee, including information such as purpose, tasks, and membership.

The amendments to §351.2, concerning Petition for the Adoption of a Rule, update outdated language in the rule, such as references to the Texas Board of Health.

COMMENTS

The 30-day comment period ended May 16, 2016. During this period, HHSC received a comment regarding the new rules from one commenter, the Coalition for Nurses in Advanced Practice. A summary of the comment and HHSC's response follows.

Comment: Regarding proposed §351.827 (Palliative Care Interdisciplinary Advisory Council), the commenter suggests amending proposed §351.827(d)(2)(C)(i) to add "or practitioner" after the word "physician" because hospice rules refer to "attending physician" and "attending practitioner" as synonymous terms.

Response: HHSC revised the rule as suggested.

HHSC revised proposed §351.805(a), (d), and (e)(2) (State Medicaid Managed Care Advisory Committee) on its own motion to cite Texas Government Code §533.041(a). Following the enactment of S.B. 200, it is unclear whether any part of §533.041 other

than subsection (a) survives: Section 3.40(a)(18) of the bill repealed Texas Government Code Chapter 533, Subchapters B and C in their entirety, including §533.041. Section 2.24 of the same bill, on the other hand, expressly amended Texas Government Code §533.041(a). HHSC thus believes that §533.041(a) continues in existence despite the general repeal. *See* Tex. Gov't Code §311.025 (stating that irreconcilable amendments adopted during the same legislative session should be harmonized if possible so that each may be given effect). HHSC need not here decide whether any other portion of §533.041 remains in effect.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.012(c), which requires the Executive Commissioner to adopt rules governing advisory committees that are established under §531.012.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-6900

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1 TAC §351.3

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.012(c), which requires the Executive Commissioner to adopt rules governing advisory committees that are established under §531.012.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ADVISORY COMMITTEES

1 TAC §§351.801, 351.803, 351.805, 351.807, 351.809, 351.811, 351.813, 351.815, 351.817, 351.819, 351.821, 351.823, 351.825, 351.827, 351.829, 351.831, 351.833, 351.835, 351.837

STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.012(c), which requires the Executive Commissioner to adopt rules governing advisory committees that are established under §531.012.

§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. Texas Government Code §533.041(a) requires the Executive Commissioner to establish the State Medicaid Managed Care Advisory Committee (SMMCAC).

(b) Purpose.

(1) The SMMCAC advises HHSC on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Abolition. Texas Government Code §533.041(a) exempts the SMMCAC from the abolition date set in Texas Government Code §2110.008.

(e) Membership. The SMMCAC consists of an odd number, but no more than 23, members.

(1) Each member is appointed by the Executive Commissioner.

(2) SMMCAC membership complies with Texas Government Code §533.041(a).

(f) Presiding officer.

(1) The Executive Commissioner appoints the presiding officer.

(2) The presiding officer serves at the will of the Executive Commissioner.

§351.827. Palliative Care Interdisciplinary Advisory Council.

(a) Statutory authority. The Palliative Care Interdisciplinary Advisory Council (Palliative Care Council or Council) is established in accordance with Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S., §2 (H.B. 1874).

(b) Purpose. The Palliative Care Council assesses the availability of patient-centered and family-focused, interdisciplinary team-based palliative care in Texas for patients and families facing serious illness. The Council works to ensure that relevant, comprehensive, and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. This includes information and education about complex symptom management, care planning, and coordination needed to address the physical, emotional, social, and spiritual suffering associated with serious illness.

(c) Tasks. The Palliative Care Council performs the following tasks:

(1) consults with and advises HHSC on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Texas Health and Safety Code §118.011;

(2) studies and makes recommendations to remove barriers to appropriate palliative care services for patients and families facing serious illness in Texas of any age and at any stage of illness; and

(3) pursues other deliverables consistent with its purpose as requested by the Executive Commissioner or adopted into the work plan or bylaws of the council.

(d) Reports.

(1) By December of each fiscal year, the Palliative Care Council files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By October 1st of each even-numbered year, the Council submits a written report to the Executive Commissioner and the standing committees of the Texas senate and house with primary jurisdiction over health matters. The report:

(A) assesses the availability of palliative care in Texas for patients in the early stages of serious disease;

(B) analyzes barriers to greater access to palliative care;

(C) analyzes policies, practices, and protocols in Texas concerning patients' rights related to palliative care, including:

(i) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician or practitioner;

(ii) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(iii) the practices and protocols on informed consent and disclosure requirements for palliative care services; and

(D) provides recommendations consistent with the purposes of the Palliative Care Council.

(e) Date of abolition. The Palliative Care Council is subject to Chapter 325, Texas Government Code. Unless continued in existence as provided by that chapter, the Palliative Care Council is abolished and this section expires September 1, 2019.

(f) Membership.

(1) The Palliative Care Council is composed of at least 15 voting members appointed by the Executive Commissioner.

(A) The Palliative Care Council must include:

(i) at least five physician members, including:

(I) two who are board certified in hospice and palliative care; and

(II) one who is board certified in pain management;

(ii) three palliative care practitioner members, including:

(I) two advanced practice registered nurses who are board-certified in hospice and palliative care; and

(II) one physician assistant who has experience providing palliative care;

(iii) four health care professional members, including:

(I) a nurse;

(II) a social worker;

(III) a pharmacist; and

(IV) a spiritual-care professional; and

(iv) at least three members:

(I) with experience as an advocate for patients and the patients' family caregivers;

(II) who are independent of a hospital or other health care facility; and

(III) at least one of whom represents an established patient advocacy organization.

(B) Health care professional members listed in subparagraph (A)(iii) of this paragraph must meet one or more of the following qualifications:

(i) experience providing palliative care to pediatric, youth, or adult populations;

(ii) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(iii) expertise in interdisciplinary palliative care.

(C) The committee may include nonvoting agency, ex-officio representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each odd-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Palliative Care Council selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the Palliative Care Council selects a successor; however, the individual may not remain in office past the individual's membership term.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.701

The Texas Health and Human Service Commission (HHSC) adopts amendments to §351.701, concerning Unrelated Donor Umbilical Cord Blood Bank Program, without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2261) and will not be republished.

BACKGROUND AND JUSTIFICATION

The current rule, §351.701, expired by its terms on August 31, 2004, but was never repealed. The amended rule §351.701 ensures that it clearly applies to the program.

In 2001, the Texas Legislature required the Health and Human Services Commission (HHSC) to establish a grant program for the establishment of an umbilical cord blood bank and authorized HHSC to adopt rules as necessary to implement the umbilical cord blood bank program. *See* Act of May 27, 2001, 77th Leg., R.S., ch. 1198, 2001 Tex. Gen. Laws 2719, 2719-20 (H.B. 3572). The Texas Legislature has, since that time, appropriated funds to HHSC for the purpose awarding "a grant of start-up money to establish an umbilical cord blood bank for recipients of blood and blood components who are unrelated to the blood donors."

The 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Health and Human Services Commission, Rider 59) appropriates $1,000,000 in General Revenue Funds in fiscal year 2016 and $1,000,000 in General Revenue Funds in fiscal year 2017 for this purpose. Rider 59 further requires HHSC to enter into a contract with a public cord blood bank in Texas for gathering umbilical cord blood from live births and retaining the blood at an unrelated donor cord blood bank for the primary purpose of making umbilical cord blood available for transplantation purpose. The contracting blood bank must be accredited by the American Association of Blood Banks and the International Organization for Standardization.

The rule amendments are part of the implementation of Rider 59.

COMMENTS

The 30-day comment period ended April 24, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

STATUTORY AUTHORITY

The amendments are adopted under the uncodified Act of May 27, 2001, 77th Leg., R.S., ch. 1198, 2001 Tex. Gen. Laws 2719, 2719-20, which requires HHSC to establish a grant program for the establishment of an umbilical cord blood bank; requires the Executive Commissioner to establish eligibility criteria by rule; and provides generally for the adoption of rules necessary to implement the act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.1, 110.12, 110.14 - 110.25, 110.30, 110.70, 110.80, 110.90, 110.95

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 110, §§110.1, 110.12, 110.14 - 110.20, 110.24, 110.30, 110.70, 110.90 and 110.95, regarding the Athletic Trainers program, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9406). The rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 110, §§110.21 - 110.23, 110.25 and 110.80 with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9406). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Athletic Trainers program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 110 are necessary to implement S.B. 202 and to regulate the Athletic Trainers program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 871, regarding the Athletic Trainers program.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Athletic Trainers program on October 3, 2016.

Adopted new §110.1 creates the definitions to be used in this chapter.

Adopted new §110.12 establishes the scope of practice for this profession.

Adopted new §110.14 establishes the composition of the advisory board of athletic trainers.

Adopted new §110.15 creates the duties of the advisory board.

Adopted new §110.16 establishes the terms and vacancies for board members.

Adopted new §110.17 creates a presiding officer and their role on the board.

Adopted new §110.18 provides guidelines on when meetings are held.

Adopted new §110.19 provides reimbursement guidelines for board members.

Adopted new §110.20 establishes application requirements.

Adopted new §110.21 establishes licensing requirements.

Adopted new §110.22 specifies the activities an athletic training student may do without being in violation of this chapter.

Adopted new §110.23 establishes examination for licensure requirements.

Adopted new §110.24 creates the terms for license renewal.

Adopted new §110.25 creates the continuing education requirements.

Adopted new §110.30 establishes the requirements for a temporary license.

Adopted new §110.70 establishes the standards of conduct for athletic trainers.

Adopted new §110.80 creates fees associated with the athletic trainers program.

Adopted new §110.90 provides the administrative penalties and sanctions.

Adopted new §110.95 establishes the enforcement authority of the Department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9406). The deadline for public comments was January 25, 2016. The Department received comments from fourteen interested parties on the proposed rules during the 30-day public comment period.

Comment--One commenter did not make any suggested changes to the proposed rules as posted but simply asked if there were any monumental changes to the rules from when they were with the Department of State Health Services (DSHS).

Department Response--The Department appreciates the comment. The commenter does not make a specific recommendation or address a specific topic or rule. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--Ten individual commenters submitted written comments and two associations. The Executive Director of Texas State Athletic Trainers Association and the President of South West Texas Athletic Trainers Association gave oral comments at the advisory board meeting asking to increase the amount of continuing education allowed through on-line education over the two year renewal period. Comments raised the issues that 1) online continuing education would give relief to licensees who could not afford travel costs or resolve personal obligations to travel; 2) many online courses currently exist; 3) the national certification board, "BOC", does not have that bar to online hours.

Department Response--The advisory board voted 3-2 to increase the number of on-line hours allowed for renewal be increased to 20 hours for each renewal period. The two members who voted against the change wished to remove any limit on the number of hours allowed for obtaining continuing education online. The advisory board agreed to continue to examine the topic for further change as TDLR takes over regulation on October 3, 2016. Upon consideration, the Commission changed this rule to remove any limit on the number of online continuing education hours for license renewal.

Comment--One comment advocated changing the definition of "athlete".

Department Response--This definition is largely controlled by the statutory definition of "athletic injury" under §451.001(1) of the Texas Occupations Code. As such, the Department does not feel any change to the rule is necessary at this time.

Comment--One commenter wished to amend §110.21 to include a new subsection to specifically delineate "emergency care" or "first aid" in the 24 hours of class requirements.

Department Response--The advisory board did not recommend change. The current rules sufficiently delineate the educational requirements. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter did not make a specific recommendation but simply asks why supervision of an apprentice could be done out of state.

Department Response--The advisory board did not recommend change. Board members discussed that there are programs out of state and as such, supervision of an apprentice could be out of state. Therefore, the Department does not believe that any change should be made to the rules based on this comment at this time.

Comment--One commenter advocated that the rules indication of supervision done by a doctor, athletic trainer, or physical therapist should be amended to simply indicate, "health care professional."

Department Response--The advisory board did not recommend change for this terminology could be overbroad and include health care professionals outside the scope of necessary expertise. Therefore, the Department does not believe that any change should be made to the rules based on this comment at this time.

Comment--One commenter advocated that §110.21 be changed to demonstrate "clinical experience" and add management and organization instruction as well.

Department Response--The advisory board did not recommend change for this terminology at this time. However, this may be later referred to a workgroup for further consideration. Therefore, the Department does not believe that any change should be made to the rules based on this comment at this time.

Comment--One commenter advocated that the rules for working hours require 20 hours of work a week for each week during the fall semester. Commenter does not provide a specific recommendation, but advocates that this does not leave much time to study.

Department Response--This requirement is a statutory requirement under §451.153 and may not be changed by rule. The Department did not make any changes to the rule based on this comment.

Comment--One commenter advocated that the CPR requirement for initial licensure under §110.21 be changed from "adult" to "professional rescuer" CPR.

Department Response--The advisory board suggested that the change is beneficial for the industry but this is largely industry practice at this time. The advisory board advised that the change in requirement from "adult" CPR to "professional rescuer" CPR would not be a substantive change to require a new posting of the rules because the regulatory burden is not increased on the licensing population. The board recommended the change to "professional rescuer" CPR in §110.21(e)(1) as a result of the comment. Based on the technical expertise of the advisory board and its recommendation, the Department adopted the rule with this change.

Comment--Commenter advocates that in §110.23(h) and (j) references to notice by "mail" be changed to indicate the department would simply notify applicants of exam matters. Currently, DSHS emails notifications.

Department Response--The Department agreed with the comment and changed the rule to simply indicate notice by the Department.

Comment--Commenter advocates to take out of §110.23(n) the date of January 1, 2004.

Department Response--After discussion, the advisory board discussed that this date is still relevant and as such, did not advocate any change. The Department does not advocate a change to the rules in response to this comment.

Comment--Commenter indicates the rules referring to a "licensed athletic trainer or sports trainer" are outdated and should be removed.

Department Response--The commenter withdrew her comments after discussion with the full board. The advisory board did not recommend any change. As such, the Department recommends no change to the rules.

Comment--One commenter did not recommend any specific changes but disagreed with the deferring management of the Texas license to outside, private organizations. Furthermore, the commenter stated that allowing physical therapists and occupational therapists the path to become licensed with minimal coursework and apprenticeship requirements demeans the athletic trainer's license.

Department Response--The statute under §451.153(2) and (3) allows physical therapists and occupational therapists to become licensed athletic trainers. Given this statutory authority, the Department does not believe that any change in rule can limit what has been allowed in statute.

Comment--One commenter asked where suspicious behavior could be reported. He wanted to know if the Department would take over enforcement of active complaint cases.

Department Response--These comments are not relevant to the rules as posted. However, when the Department begins active regulation of the program on October 3, 2016, complaints may be made on the Department website. The Department will complete all active cases transferred by DSHS after October 3, 2016.

Comment--One commenter noted a mistake on the DSHS website.

Department Response--The Department appreciates the comment and will turn it over to DSHS.

The Board of Athletic Trainers met on November 9, 2015, to discuss a draft of the proposed rules with the Department before they were published in the *Texas Register* for public comment.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 22, 2016, advisory board meeting. The Board of Athletic Trainers met again on February 22, 2016, to discuss the rule publication and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes made in response to public comment. At its meeting on April 13, 2016, the Commission adopted the proposed rules with changes as recommended by the Board, and with a change to remove any bar to online continuing education hours for license renewal.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 451, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the adoption.

§110.21. License Requirements.

(a) Applicants qualifying under the Act, §451.153(a)(1), shall have:

(1) a baccalaureate or post-baccalaureate degree, which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities.

(2) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by a certified or state-licensed athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(b) In place of the requirements in subsection (a), applicants qualifying under the Act, §451.153(a)(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the Board of Certification, Inc. (BOC).

(c) Applicants qualifying under the Act, §451.153(a)(2) or (a)(3), shall have a baccalaureate or post-baccalaureate degree or a state-issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state-licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(d) In place of the requirements in subsections (a) and (b), applicants qualifying under the Act, §451.153(a)(1), shall have a baccalaureate or post-baccalaureate degree in athletic training from a college or university, which held accreditation, during the applicants matriculation at the college or university and at the time the degree was conferred, from a nationally recognized accrediting organization that is approved by the department.

(e) Certification required. An applicant must have:

(1) current certification in the techniques of professional rescuer cardio-pulmonary resuscitation and the use of an automated external defibrillator; or

(2) current certification for Emergency Medical Services (EMS) with the department.

(f) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university, which held accreditation, at the time the degree was conferred, from a regional educational accrediting association that is approved by the department.

(g) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.

(h) The department shall not accept courses, which an applicant's transcript indicates, were not completed with a passing grade for credit.

§110.22. Athletic Training Student Activities.

An athletic training student performing the activities of an athletic trainer will not be in violation of the act if the student is performing:

(1) as part of the athletic training apprenticeship hours described in §110.21; or

(2) as follows:

(A) the student's supervising college or university licensed athletic trainer has approved, referred, sent, or directed the student to a setting other than with the student's school's intercollegiate athletes;

(B) the setting is with another college or university, a high school, a professional athletic team, or a health care clinic; and

(C) the student is directly supervised in the setting by a licensed athletic trainer, licensed physician or licensed physical therapist.

(3) Hours which fall under paragraph (2), shall not be counted as apprenticeship hours unless the hours meet the requirements of §110.21.

(4) For the purposes of this section, supervision means daily, direct, and immediate communication.

(5) An athletic training student who has graduated, shall not accumulate apprenticeship hours at the same college, university, high school, professional athletic team, or health care clinic at which the athletic training student is employed. In cases where an athletic training student is employed by a school, the athletic training student shall not accumulate apprenticeship hours at a setting within the same school.

§110.23. Examination for Licensure.

(a) The department shall offer examinations at least two times a year at times and at places established and announced by the department.

(b) The examination shall consist of written and practical questions and evaluations prescribed by the department.

(c) An applicant may file an application for examination if the applicant:

(1) is within 30 semester hours of graduation;

(2) has completed or is currently pre-registered or enrolled in the courses listed in §110.21; and

(3) has completed at least 1,300 hours of the required 1,800 hours and the apprenticeship program is in progress; or

(4) is currently enrolled in, and within two semesters of graduating from, an athletic training program at a college or university which holds accreditation from a nationally recognized accrediting organization that is approved by the department, if the applicant qualifies under the Act, §451.153(a)(1); or

(5) has completed at least 600 hours of the required 720 hours and the apprenticeship program is in progress, if the applicant qualifies under the Act, §451.153(a)(2) or (a)(3).

(d) The department shall review all applications prior to the examination. An applicant meeting the requirements of subsection (c) or of §110.21, and pays the required examination fee, shall be approved to take the examination.

(e) The department shall notify an applicant whose application has been approved for examination at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(f) An examination registration form must be completed and returned to the department by the applicant with the required examination fee (unless otherwise instructed by the department) at least 15 days prior to the date of examination. Applications which are received incomplete or late may cause a delay.

(g) Examinations shall be graded by the department's designee.

(h) The department shall notify each applicant of the results of the examination within 30 days of the date of the examination.

(i) The following procedures relate to applicants who fail the examination prescribed by the department.

(1) An applicant who fails the examination may take a subsequent examination after paying the examination fee.

(2) The department will furnish a copy of the department's policy concerning examination review to an applicant who fails an examination.

(j) An applicant who fails to take the examination within a period of two years after the initial examination approval notice sent by the department, shall have such approval withdrawn and the application for licensure voided.

(k) An applicant who has failed the state examination described in subsections (a) - (m), must successfully complete that examination in order to be issued a license. If the application has been voided as described in subsection (j), the person shall submit a new application, and the provisions of subsection (n) shall apply.

(l) Applicants who have passed the examination and do not have a degree, will have 90 days from their graduation date to submit all documents and fees necessary to show compliance with this chapter and complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

(m) A first-time applicant must apply for examination within five years from the date on which the applicant's qualifying degree was conferred or the apprenticeship was completed, whichever is later. An applicant may submit an application after this time period upon successful completion of remedial coursework or apprenticeship, as approved by the department.

(n) If an applicant has successfully completed the examination administered by the Board of Certification, Inc. (BOC) on or after January 1, 2004, the applicant shall not be required to complete the state examination described in subsections (a) - (m), unless the applicant has previously held a license issued by the department. The applicant must furnish to the department a copy of the test results indicating that the applicant passed the examination.

(o) If an applicant has completed the examination administered by the Board of Certification, Inc. (BOC) before January 1, 2004, the applicant shall be required to complete the state examination described in subsections (a) - (m).

§110.25. Continuing Education Requirements.

(a) To renew a license that expires on or after September 1, 2015 a licensee must have completed 40 clock-hours of continuing education during the previous two-year period. The continuing education must include two clock-hours of training in concussion management. In addition to the number of continuing education clock-hours required under this subsection, a licensee must also show proof of current Emergency Cardiac Care certification at the Basic Life Support for Healthcare Providers/Professional Rescuers and Healthcare Providers level or beyond, which shall be maintained throughout each two-year period. The two-year period begins on the first day following the license issuance month and ends upon the expiration date of the license.

(b) Continuing education taken by a licensee for renewal, shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses at a regionally accredited college or university related to sports medicine;

(2) clinical courses related to athletic training and/or sports medicine;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine or athletic training;

(4) instructing or presenting education programs or activities without compensation at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences in athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(5) publishing a book or an article in a peer review journal relating to athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(6) serving as a skills examiner at the state licensure examination, not to exceed one clock-hour of continuing education credit for each examination date for a maximum of four clock-hours of credit each continuing education period; or

(7) successful completion of an online or distance education program in athletic training or sports medicine.

(c) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock-hours of credit for each semester hour successfully completed for credit or audit, as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (b)(2) or (3), shall be credited on a one-for-one basis, with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) Successful completion of courses described in subsection (b)(7), is evidenced by a certificate of completion presented by the sponsoring organization of the online or distance education program.

(4) Approval by the department must be obtained for each continuing education program as described in subsection (b), unless continuing education credit is granted by a national, regional or state health care professional association.

(5) Successful completion of courses related to athletic training and/or sports medicine as described in subsection (b)(2) and (3), is evidenced by a certificate of completion or attendance that is issued by the sponsoring organization of the course.

(d) Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty, if different from sponsors and contact person.

(e) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal, unless the license holder has been selected for audit.

(1) The audit process shall be as follows:

(2) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(3) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(4) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(5) A licensee who is selected for a continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.

(6) Licenses will not be renewed until continuing education requirements have been met.

(f) The department may not grant continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee, such as learning occurring from experience or research;

(2) professional organization activity, such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a); or

(4) performance of duties that are routine job duties or requirements.

§110.80. Fees.

(a) All fees paid to the department are nonrefundable.

(b) The schedule of fees is as follows:

(1) application fee--$60;

(2) temporary license fee--$200;

(3) written examination fee--$75;

(4) practical examination fee--$90;

(5) initial license fee--$100;

(6) returned check fee--$25;

(7) renewal license--$250;

(8) jurisprudence exam fee--$35;

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

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CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

(Editor's Note: Due to editing errors in the proposed rulemaking notice, incorrect language appeared in 16 TAC §§111.131, 111.182, 111.213, and 111.220 as published in the January 8, 2016, issue of the Texas Register (41 TexReg 362). For the purpose of clarity, those sections are being republished in this issue as originally submitted by the Texas Department of Licensing and Regulation.)

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 111, Subchapter A, §111.1 and §111.2; Subchapter B, §§111.10 - 111.14; Subchapter C, §§111.20 - 111.23; Subchapter D, §§111.30, 111.35 - 111.37; Subchapter E, §§111.40, 111.45 - 111.47; Subchapter F, §§111.55 - 111.57; Subchapter G, §§111.60, 111.65 and 111.66; Subchapter H, §§111.70, 111.75 - 111.77; Subchapter I, §§111.80, 111.85 - 111.87; Subchapter J, §§111.95 - 111.97; Subchapter K, §§111.100, 111.105 and 111.106; Subchapter L, §§111.110, 111.115 - 111.117; Subchapter N, §111.130 and §111.132; Subchapter O, §111.140; Subchapter P, §§111.150 - 111.155; Subchapter Q, §111.160; Subchapter R, §111.170 and §111.171; Subchapter S, §§111.180, 111.181, and 111.183; Subchapter T, §§111.190 - 111.192; Subchapter U, §§111.200 - 111.202; Subchapter V, §§111.210 - 111.212, 111.214, and 111.215; and Subchapter X, §§111.230 - 111.232, regarding the Speech Language Pathologists and Audiologists program, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 362). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 111, Subchapter F, §111.50 and Subchapter J, §111.90 with changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 362). These rules will be republished. As previously noted, §§111.131, 111.182, 111.213, and 111.220 will be republished for the purposes of clarification.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Speech Language Pathologists and Audiologists program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 111 are necessary to implement S.B. 202 and to regulate the Speech Language Pathologists and Audiologists program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 741, regarding Speech-Language Pathologists and Audiologists.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Speech Language Pathologists and Audiologists program on October 3, 2016.

Adopted new Subchapter A provides the General Provisions for the proposed new rules.

Adopted new §111.1 provides the statutory authority for the Commission and Department to regulate speech-language pathologists and audiologists.

Adopted new §111.2 creates the definitions to be used in the speech-language pathologists and audiologists program.

Adopted new Subchapter B creates the Speech-Language Pathologists and Audiologists Advisory Board.

Adopted new §111.10 provides the composition and membership requirements of the advisory board.

Adopted new §111.11 details the duties of the advisory board.

Adopted new §111.12 sets the terms and vacancies process for advisory board members.

Adopted new §111.13 provides for a presiding officer of the advisory board.

Adopted new §111.14 provides details regarding advisory board meetings.

Adopted new Subchapter C establishes the examination requirements for the program.

Adopted new §111.20 provides general examination requirements.

Adopted new §111.21 explains the written examination requirement.

Adopted new §111.22 explains the waiver of the written examination requirement.

Adopted new §111.23 details the requirements for the Jurisprudence Examination.

Adopted new Subchapter D establishes the requirements to obtain a speech-language pathology license.

Adopted new §111.30 explains the licensing requirements for those seeking a speech-language pathology license.

Adopted new §111.35 details the application and eligibility requirements for the speech-language pathology license.

Adopted new §111.36 explains the process for issuing a speech-language pathology license.

Adopted new §111.37 details the license terms and renewal requirements for the speech-language pathology license.

Adopted new Subchapter E establishes the requirements to obtain an intern in speech-language pathology license.

Adopted new §111.40 explains the licensing and internship requirements for the intern in speech-language pathology license.

Adopted new §111.45 details the application and eligibility requirements for an intern in speech-language pathology license.

Adopted new §111.46 explains the process for issuing an intern in speech-language pathology license.

Adopted new §111.47 details the license terms and renewal requirements for the intern in speech-language pathology license.

Adopted new Subchapter F establishes the requirements to obtain an assistant in speech-language pathology license.

Adopted new §111.50 explains the licensing requirements for the assistant in speech-language pathology license.

Adopted new §111.55 details the application and eligibility requirements for an assistant in speech-language pathology license.

Adopted new §111.56 explains the process for issuing an assistant in speech-language pathology license.

Adopted new §111.57 details the license terms and renewal requirements for the assistant in speech-language pathology license.

Adopted new Subchapter G establishes the requirements to obtain a temporary certificate of registration in speech-language pathology.

Adopted new §111.60 explains the registration requirements for the temporary certificate of registration in speech-language pathology.

Adopted new §111.65 details the application and eligibility requirements for the temporary certificate of registration in speech-language pathology.

Adopted new §111.66 explains the process for issuing a temporary certificate of registration in speech-language pathology.

Adopted new Subchapter H establishes the requirements to obtain an audiology license.

Adopted new §111.70 explains the licensing requirements for the audiology license.

Adopted new §111.75 details the application and eligibility requirements for an audiology license.

Adopted new §111.76 explains the process for issuing an audiology license.

Adopted new §111.77 details the license terms and renewal requirements for the audiology license.

Adopted new Subchapter I establishes the requirements to obtain an intern in audiology license.

Adopted new §111.80 explains the licensing and internship requirements for the intern in audiology license.

Adopted new §111.85 details the application and eligibility requirements for an intern in audiology license.

Adopted new §111.86 explains the process for issuing an intern in audiology license.

Adopted new §111.87 details the license terms and renewal requirements for the intern in audiology license.

Adopted new Subchapter J establishes the requirements to obtain an assistant in audiology license.

Adopted new §111.90 explains the licensing requirements for the assistant in audiology license.

Adopted new §111.95 details the application and eligibility requirements for an assistant in audiology license.

Adopted new §111.96 explains the process for issuing an assistant in audiology license.

Adopted new §111.97 details the license terms and renewal requirements for the assistant in audiology license.

Adopted new Subchapter K establishes the requirements to obtain a temporary certificate of registration in audiology.

Adopted new §111.100 explains the registration requirements for the temporary certificate of registration in audiology.

Adopted new §111.105 details the application and eligibility requirements for the temporary certificate of registration in audiology.

Adopted new §111.106 explains the process for issuing a temporary certificate of registration in audiology.

Adopted new Subchapter L establishes the requirements to obtain a dual license in speech-language pathology and audiology.

Adopted new §111.110 explains the licensing requirements for those seeking a dual license in speech-language pathology and audiology.

Adopted new §111.115 details the application and eligibility requirements for the dual speech-language pathology and audiology license.

Adopted new §111.116 explains the process for issuing a dual speech-language pathology and audiology license.

Adopted new §111.117 details the license terms and renewal requirements for the dual speech-language pathology and audiology license.

Adopted new Subchapter N establishes the continuing professional education requirements for this program.

Adopted new §111.130 provides the continuing professional education requirements and hours for this program.

Adopted new §111.131 details continuing professional education courses and credits.

Adopted new §111.132 explains the continuing professional education audit process and the records that must be kept.

Adopted new Subchapter O establishes the responsibilities of the Commission and the Department.

Adopted new §111.140 requires the Commission to adopt rules necessary to implement the Speech-Language Pathology and Audiology program, including rules governing changes to the standards of practice rules.

Adopted new Subchapter P establishes the responsibilities of the licensee and creates the code of ethics for this program.

Adopted new §111.150 requires a licensee to notify the Department of a change of name, address, or other pertinent information.

Adopted new §111.151 provides requirements for displaying a license and notifying consumers.

Adopted new §111.152 prohibits false, misleading or deceptive advertising.

Adopted new §111.153 establishes record keeping and billing requirements.

Adopted new §111.154 explains the requirements, duties and responsibilities of supervisors.

Adopted new §111.155 creates the standards of ethical practice (code of ethics) for all licensees in this program.

Adopted new Subchapter O establishes fees for the Speech-Language Pathologists and Audiologists program.

Adopted new §111.160 details all fees associated with the Speech-Language Pathologists and Audiologists program as regulated by the Commission and the Department.

Adopted new Subchapter R establishes a subchapter to address complaints.

Adopted new §111.170 requires the Department to provide a toll free number for complaints to be filed.

Adopted new §111.171 provides that the Commission will adopt rules regarding complaints involving standard of care.

Adopted new Subchapter S establishes enforcement provisions.

Adopted new §111.180 allows for administrative penalties and sanctions.

Adopted new §111.181 provides the authority to enforce Texas Occupations Code, Chapter 401 and this chapter.

Adopted new §111.182 provides the authority to order refunds for a hearing instrument.

Adopted new §111.183 requires a license holder or registration holder to surrender the license or registration to the Department on demand.

Adopted new Subchapter T establishes screening procedures.

Adopted new §111.190 provides communication screening requirements.

Adopted new §111.191 details the hearing screening process.

Adopted new §111.192 explains the authority for newborn hearing screening.

Adopted new Subchapter U establishes provisions for fitting and dispensing of hearing instruments.

Adopted new §111.200 explains registration of audiologists and interns in audiology to fit and dispense hearing instruments.

Adopted new §111.201 provides general practice requirements of audiologists and interns in audiology who fit and dispense hearing instruments.

Adopted new §111.202 creates requirements for audiologists and interns in audiology conducting audiometric testing for the purpose of fitting and dispensing hearing instruments.

Adopted new Subchapter V establishes provisions for telehealth.

Adopted new §111.210 establishes definitions relating to telehealth.

Adopted new §111.211 explains the service delivery models for speech-language pathologists.

Adopted new §111.212 creates requirements for the use of telehealth by speech-language pathologists.

Adopted new §111.213 details limitations on the use of telecommunications technology by speech-language pathologists.

Adopted new §111.214 establishes requirements for providing telehealth services in speech-language pathology.

Adopted new §111.215 establishes requirements for providing telepractice services in audiology.

Adopted new Subchapter W establishes joint rules regarding the sale of hearing instruments. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the sale of hearing instruments.

Adopted new §111.220 details the requirements regarding the sale of hearing instruments.

Adopted new Subchapter X establishes joint rules for fitting and dispensing of hearing instruments by telepractice. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the fitting and dispensing of hearing instruments by telepractice.

Adopted new §111.230 explains the purpose of the subchapter.

Adopted new §111.231 creates definitions to be used in this subchapter.

Adopted new §111.232 establishes requirements for providing telehealth services for the fitting and dispensing of hearing instruments.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 362). The deadline for public comments was February 8, 2016. The Department received comments from ten interested parties, consisting of eight individuals, the Texas Speech-Language Hearing Association (TSHA), and the Texas Academy of Audiology on the proposed rules during the 30-day public comment period.

Comment--The Department received comments from the TSHA and from an individual regarding the number of direct and indirect supervision hours under §111.50(g)(3), Assistant in Speech-Language Pathology License--License Requirements. The commenters appreciated the flexibility given in supervising the licensed assistants while maintaining a minimum of eight hours per month of supervision, at least four hours of which are direct supervision. The commenters had some concern with the telehealth and telepractice provisions that may be used for up to seven hours of supervision. The commenters stated that due to the complexity and variety of the communication disorders serviced by speech language pathologists, not all patients/clients/students would be appropriate candidates for treatment via telepractice, which is also a concern regarding the supervision of a licensed assistant. The commenters stated that they would support the use of telepractice for up to four hours of indirect supervision and up to one hour of direct supervision, for a total of up to five hours of supervision by telepractice.

Department Response--Based on the public comments and the Advisory Board discussion and recommendation, the Department has made changes to §111.50(g)(3). The number of in person and onsite supervision hours was increased from one hour to two hours, and the total number of hours that may be supervised using telepractice was decreased from seven hours to six hours. The Advisory Board did not think it would be more burdensome to the supervisor to increase the in person and onsite hours of supervision from one hour to two hours per month, since this type of supervision could occur in one supervision trip

or session and that the two hours did not need to be conducted during separate trips or sessions during the month. The Department made other changes to §111.50(g)(3) based on a separate comment discussed below.

Comment--The Department received another comment from an individual regarding §111.50(g)(3), Assistant in Speech-Language Pathology License--License Requirements, and §111.213, Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists. The commenter had questions regarding the interaction between these two sections of the proposed rules. The commenter asked whether telepractice can be used for seven hours of supervision a month at the supervisor's discretion, or only if an exception to the supervisor plan is approved. The commenter stated that it is unclear in reading the proposed rules.

Department Response--In response to this public comment and the Advisory Board discussion and recommendations, the Department has amended §111.50(g)(3) by add clarifying language that the telehealth and telepractice provisions allowed by Subchapter V may be used for up to six hours of supervision without applying for the exception referenced under §111.213. The Department made changes in the number and type of supervision hours based on a separate comment on §111.50(g)(3) as discussed above. The Department did not make any changes to §111.213 in response to this comment.

Comment--The Department received another comment from an individual related to §111.50(g)(3), Assistant in Speech-Language Pathology License--License Requirements. The commenter was glad to see rule changes that positively affect the practice of speech-language pathology, and in particular, the changes that provide more flexibility for supervising assistants. The commenter stated that the changes, which allow for the supervision time to occur in monthly units, will allow very rural patients to receive services.

Department Response--The Department appreciates the comment on the proposed changes. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received another comment from an individual regarding §111.50(g)(3), Assistant in Speech-Language Pathology License--License Requirements. The commenter had a question about months such as December, when school is only in session for three weeks. The commenter asked whether licensees will be able to do six hours in that month or will they still be required to supervise eight hours in a three week time period.

Department Response--The licensee will still be required to supervise a minimum of eight hours per month. The proposed rule creates flexibility by allowing supervision hours to be conducted and counted on a monthly basis rather than on a weekly basis; however, the proposed rule does not change the minimum number of eight hours that must be supervised per month. The current DSHS rule at 22 TAC §741.64(h)(4) requires at least two hours of supervision per week, which means at least eight hours per month. The Department has retained the same total number of hours of supervision per month. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received comments from the TSHA and an individual regarding §111.214, Requirements for Providing Telehealth Services in Speech-Language Pathology. The commenters support and agree with the licensing requirement for providers of telehealth services who practice in Texas.

Department Response--The Department appreciates the comment on the proposed rule. The proposed rule reflects and carries over the current DSHS rule at 22 TAC §741.215, with updates to the appropriate licensing entity. The Department did not make any changes to the proposed rule in response to this comment.

Comment--The Department received comments from the TSHA and an individual regarding §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists. The commenters support the requirement for initial contact between a licensed speech-language pathologist and client to be at the same physical location to adequately assess the client's candidacy for telehealth services prior to the client receiving telehealth services.

Department Response--The Department appreciates the comment on the proposed rule. The proposed rule reflects and carries over the current DSHS rule at 22 TAC §741.213. The Department did not make any changes to the proposed rule in response to this comment.

Comment--The Department received comments from the TSHA and an individual regarding §111.90, Assistant in Audiology License--Licensing Requirements. The commenters identified a conflict between §111.90(e)(4)(A) and §111.90(f)(5)(A) and (D). In §111.90(e)(4)(A), the licensed assistant may conduct assessments for documenting progress in aural rehabilitation therapy; however, under §111.90(f)(5)(A) and (D), the licensed assistant shall not conduct aural rehabilitation activities or therapy or administer assessments during aural rehabilitation therapy. The individual commenter also stated that the assistant would not have training to perform these activities based on the proposed licensing requirements and training. Both commenters suggested the elimination of §111.90(e)(4)(A).

Department Response--Based on these public comments and the Advisory Board discussions and recommendations, the Department has removed §111.90(e)(4)(A). In addition, the Department has removed §111.90(e)(4)(B) based on the Advisory Board recommendation. The Advisory Board at its November 17, 2015, meeting discussed moving activities from the list of activities that an audiology assistant could do to the list of activities that the audiology assistant could not do as reflected in the Department proposed rules as published under §111.90(f)(4) and (f)(5). Section 111.90(e)(4) as published had another provision regarding aural rehabilitation that was not deleted or moved to the list of activities that the assistant could not do. The Department has deleted §111.90(e)(4)(A) to eliminate the conflict between §111.90(e)(4)(A) and §111.90(f)(5)(A) and (D) and to reflect the Advisory Board's discussion and intent that activities related to aural rehabilitation are to be included in the list of activities that an audiology assistant cannot perform. In addition, the Advisory Board also recommended deleting §111.90(e)(4)(B), which includes evaluations that the assistant cannot perform. This change would be consistent with the recently adopted DSHS rules that removed this provision.

Comment--The Department received comments from the Texas Academy of Audiology related to §111.90, Assistant in Audiology License--Licensing Requirements. The Texas Academy of Audiology submitted comments in support of the proposed rules changes, specifically regarding audiology assistants. The commenter stated that the current licensing requirements needed to be updated. The commenter stated that it was fully supportive of the proposed rule changes for the education requirements to include a high school diploma or equivalent and that the

change is entirely consistent with the position statements offered by both the American Academy of Audiology and the American Speech-Language-Hearing Association on this issue. The commenter also stated that the proposed rule changes for what duties the audiology assistant can and cannot perform have been appropriately addressed. The commenter does foresee future discussions about the specific training courses used, but stated that for now the Council for Accreditation of Occupational Hearing Conservation (CAOHC) training course is appropriate given the lack of alternatives.

Department Response--The Department appreciates the comments in support of the proposed changes. Regarding the training courses used, this may be an issue to be addressed by a work group in the future. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received a comment from the TSHA regarding §111.90, Assistant in Audiology License--Licensing Requirements. TSHA expressed its cautious support of the proposed rules to change the education requirement for a licensed assistant in audiology from a bachelor's degree to a high school diploma or GED. TSHA stated that the current education requirement for licensed assistants may be excessively restrictive, since there are very few licensed audiology assistants in Texas. TSHA also stated it was in support of a limit on the number of licensed assistants one licensed audiologist can supervise along with the specific requirements for on-site and in-person supervision. TSHA encouraged longitudinal tracking of this proposed rule change to insure consumer/client protection as well as to track an increase in the number of licensed assistants.

Department Response--The Department appreciates the comment on the proposed changes. The issues regarding tracking changes may be appropriate for future discussions by a work group. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received comments from the TSHA regarding §111.154, Requirements, Duties and Responsibilities of Supervisors. TSHA stated that it supports the clear description of the supervision requirements based on whether the assistant holds a baccalaureate degree or a high school diploma or equivalent. TSHA requested the elimination of the word "interns" as it relates to audiology assistants with a high school diploma or equivalent.

Department Response--The Department appreciates the comment regarding the clear description of the supervision requirements. The Department did not make the suggested change to remove the word "intern" from §111.154(e)(4)(C). The proposed rules address the total number of interns and/or assistants that can be supervised by a single supervisor and were modeled after the DSHS rules at 22 TAC §741.44(d)(4). The Department proposed rules do not address the total number of interns and the total number of assistants separately. The supervisor can supervise any combination of interns and assistants as long as the total number is not exceeded. At its November 17, 2015, meeting, the Advisory Board discussed that if the education requirements were changed for an audiology assistant from a bachelor's degree to a high school diploma or equivalent, the supervisor would not be able to supervise as many individuals. The proposed rules reflect the total number of interns and/or assistants that can be supervised if the audiology assistant holds a bachelor's degree or holds a high school diploma or equivalent. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received a comment from an individual regarding §111.154, Requirements, Duties and Responsibilities of Supervisors. The commenter agreed that an audiologist should not be allowed to supervise as many individuals if the assistants have a high school diploma or equivalent. The commenter requested that the Department keep the proposed rules under §111.154 regarding a supervisor supervising no more than a total of two (2) audiology interns and/or assistants, if an assistant holds a high school diploma or equivalent. The commenter stated that this is a strong change to make as compared to previous rules and stated that it is important to monitor patient services to determine the impact of this change.

Department Response--The Department appreciates the comment in support of the proposed changes. The issue regarding monitoring the impact of the changes may be appropriate for future discussions by a work group. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received a comment from an individual regarding §111.75(d)(2), Audiology License--Application and Eligibility Requirements. The commenter stated that a person who is requesting a waiver and has ASHA or ABA certification could have received certification prior to 2011, which means they could be a certified audiologist with a master's degree. The commenter recommended adding language as found in §111.80(e) (master's degree if the audiologists applied for the certification before September 1, 2011, or a doctoral degree if the audiologists applied for certification after September 1, 2011).

Department Response--Pursuant to Senate Bill 613, 82nd Legislature, Regular Session (2011), audiology license applicants must have at least a doctoral degree in audiology or a related hearing science for license applications filed on or after September 1, 2011. The ASHA or ABA certification only waives the clinical experience and examination requirements; it does not waive the education/degree requirements to obtain a license from the State. While an applicant may have obtained the ASHA or ABA certification before September 1, 2011, that date is relevant for purposes of the applicant filing the license application with the State. Texas Occupations Code Chapter 401 does not include reciprocity authority except as provided under §401.308 related to provisional licenses. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received comments from an individual regarding §111.80(f)(1), Intern in Audiology License--Licensing and Internship Requirements. The commenter discussed the 1600 hours of supervised clinical work. The comment noted that while it is not a new requirement, it assumes the individual with an audiology intern license will work 40 hours a week for 40 weeks. The commenter discussed other internship arrangements and placements and the potential impact of the 1600 hours on interns and schools. The commenter recommended considering a reduction in hours, and stated that even a reduction to 1500 hours would be beneficial to the licensees.

Department Response--The Department appreciates the comment on the proposed changes. The issue regarding the 1600 hours was discussed by the Advisory Board at its November 17, 2015, meeting, but it decided to leave the currently required 1600 hours in the proposed rules as published. As part of the Department's and Advisory Board's discussion of the public comments, the issue regarding the 1600 hours was assigned to a work group of the Advisory Board for further study. The Department did not

make any changes to the proposed rules in response to this comment.

Comment--The Department received comments by email and by mail from an individual regarding §111.30(a), Speech-Language Pathology License--Licensing Requirements. The commenter holds a Life-time Certification in Speech-Language-Hearing Therapy issued by the Texas Education Agency (TEA). The commenter is concerned that she and others who hold the TEA-issued certification, which allows them to practice within the public schools, will be prevented from doing so if they do not hold a license issued by the Department. The commenter stated that she completed all the necessary requirements at the time and obtained a valid life-time certification. The commenter suggested that proposed §111.30(a) be amended to add language referencing the "Life-time TEA Certification in the area of Speech-Language Pathology (restricted to the public schools)." The commenter requested that the Department consider "grandfathering in" the commenter and other therapists like her so they could continue in their profession.

Department Response--Section 111.30(a) implements Texas Occupations Code §401.301, License Required. The statute also provides exemptions from holding a license under Chapter 401, and one of these exemptions is §401.054, Persons Certified by Texas Education Agency. Chapter 401 only includes exemptions; it does not include any grandfathering authority or provisions. The Advisory Board discussed that the last time TEA issued one of the lifetime certifications was in 1995 and that there are approximately 400 people that currently hold this TEA certification. The Advisory Board discussed that there were two previous opportunities for persons holding the TEA certifications to grandfather into the speech-language pathology license if they had been practicing, but those opportunities have passed and are no longer available. The statute and the proposed rules do not affect persons practicing with the Life-time TEA Certification as long as they are practicing under the scope of that certification and under the authority of TEA. The Department did not make any changes to the proposed rules in response to this comment. The Department will consider making this issue part of its frequently asked questions and customer service documents.

Comment--The Department received a comment from an individual requesting technical assistance in accessing a copy of the proposed rules.

Department Response--The Department provided assistance with a website link to the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Department received a comment from an individual asking how to submit comments about specific rules. The commenter wanted to know if there is a specific format or website that provides guidance in formulating a proposal or comments.

Department Response--The preamble of the proposed rules includes information about how and when to submit comments on the proposed rules to the Department. The preamble is included with the proposed rules published in the Texas Register and posted on the Department's website. An interested party may submit comments by mail, email, or fax, and there is no specific format that is required for the comments. The Department did not make any changes to the proposed rules in response to this comment.

The Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) met on November 17, 2015, to consider a draft of the proposed rules. The Advisory Board amended the draft rules and recommended proposing them in the *Texas Register* for public comment.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 24, 2016, advisory board meeting.

The Advisory Board met on February 24, 2016, to discuss the proposed rules with Department staff and DSHS staff and to review the rule publication and the public comments received. The Department and the Advisory Board recommended changes to the proposed rules based on the public comments received and the Advisory Board discussion. The Advisory Board voted and unanimously recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes. At its meeting on April 13, 2016, the Commission adopted the proposed rules with changes as recommended by the Advisory Board and the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.1, §111.2

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

16 TAC §§111.10 - 111.14

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. EXAMINATIONS

16 TAC §§111.20 - 111.23

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.30, 111.35 - 111.37

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.40, 111.45 - 111.47

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.50, 111.55 - 111.57

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section. The applicant must meet the following requirements:

(1) possess a baccalaureate degree with an emphasis in communicative sciences or disorders;

(2) have acquired at least twenty-four (24) semester hours in speech-language pathology and/or audiology with a grade of "C" or above with the following conditions:

(A) at least 18 of the 24 semester hours must be in speech-language pathology;

(B) at least three of the 24 semester hours must be in language disorders;

(C) at least three of the 24 semester hours must be in speech disorders; and

(D) the 24 semester hours excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than twenty-five (25) hours of clinical observation in the area of speech-language pathology and twenty-five (25) hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past ten (10) years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a), were earned more than ten (10) years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed twenty-four (24) semester credit hours in communicative sciences or disorders, which may include some leveling hours.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a). The applicant must bear all expenses incurred during the procedure. The department shall evaluate the documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the department.

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §111.154 and shall submit:

(A) the Supervisory Responsibility Statement Form; and

(B) the prescribed Clinical Deficiency Plan.

(2) The department shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within sixty (60) days of the issue date of the assistant's license or the licensed assistant must submit a new plan.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the licensed assistant's performance; and

(C) a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, in person supervision. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Department staff shall evaluate the documentation required in paragraph (4) and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under 100% direct, in person supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4).

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a Supervisory Responsibility Statement Form shall be submitted to the department seeking approval for the change in supervision. If the documentation required by paragraph (4), has not been received and approved by the department, approval for the change in supervision shall not be granted.

(f) A Supervisory Responsibility Statement Form shall be completed and signed by both the applicant and the proposed department-approved supervisor who agrees to assume responsibility for all services provided by the licensed assistant or submitted in a manner prescribed by the department. The proposed department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant. The Supervisor Responsibility Statement Form shall be submitted upon:

(A) application for an assistant license;

(B) license renewal when there is a change in supervisor;

(C) other changes in supervision; and

(D) the addition of other department-approved supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the licensed assistant, each licensed speech-language pathologist department-approved supervisor shall be identified on the Supervisor Responsibility Statement Form, and meet the minimum requirement of supervision as referenced in subsection (g)(4). The licensed assistant shall only provide services for the caseload of the licensed speech-language pathologist department-approved supervisors.

(3) A licensed assistant may renew the license if there is a change in supervision, but may not practice until a new Supervisory Responsibility Statement Form is approved.

(4) In the event the licensed speech-language pathologist department-approved supervisor ceases supervision of the licensed assistant, the licensed speech-language pathologist department-approved supervisor shall notify the department, in writing, and shall inform the licensed assistant to stop practicing immediately. The department shall hold the licensed department-approved supervisor responsible for the practice of the licensed assistant until written notification has been received by the department.

(5) Should the licensed assistant practice without approval from the department, disciplinary action may be initiated against the licensed assistant. If the licensed speech-language pathologist department-approved supervisor had knowledge of this violation, disciplinary action against the licensed speech-language pathologist department-approved supervisor may also be initiated.

(g) A licensed speech-language pathologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) Initial contacts directly with the client shall be conducted by the licensed speech-language pathologist department-approved supervisor.

(2) Following the initial contact, the licensed speech-language pathologist department-approved supervisor shall determine whether the licensed assistant has the competence to perform specific duties before delegating tasks.

(3) The licensed speech-language pathologist department-approved supervisor shall provide a minimum of eight (8) hours per month of supervision, at least four (4) hours of which are direct, and at least two (2) hours of which is in person and onsite supervision where the licensed assistant is providing the therapy. This paragraph applies whether the licensed assistant's practice is employed full- or part-time. For the purposes of this paragraph the telehealth and telepractice provisions allowed by Subchapter V may be used for up to six (6) hours of supervision without applying for the exception referenced under §111.213. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant's and client's performance. Such documentation may be requested by the department.

(A) A licensed assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(B) A licensed assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the licensed assistant has been appropriately trained and the assessments are conducted under the direction of the licensed speech-language pathologist department-approved supervisor. A licensed assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(h) Although the licensed speech-language pathologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed speech-language pathologist department-approved supervisor need not be present when the licensed assistant is completing the assigned tasks; however, the licensed speech-language pathologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed speech-language pathologist department-approved supervisor shall keep job descriptions and performance records of the licensed assistant. Records shall be current and made available upon request to the department.

(3) The licensed speech-language pathologist department-approved supervisor of the licensed assistant shall:

(A) in writing, determine the skills and assigned tasks the licensed assistant is able to carry out within the licensed assistant's scope of practice. This document must be agreed upon by the licensed assistant and the licensed speech-language pathologist department-approved supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review them with the licensed assistant who will provide the service; and

(D) maintain responsibility for the services provided by the licensed assistant.

(4) The licensed assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(5) Examples of duties that a licensed speech-language pathologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist department-approved supervisor;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests if the test developer does not specify a graduate degreed examiner and the department-approved supervisor has determined the licensed assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials;

(H) participate with the licensed speech-language pathologist department-approved supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist department-approved supervisor;

(I) may write lesson plans based on the therapy program developed by the licensed speech-language pathologist department-approved supervisor. The lesson plans shall be reviewed and approved by the licensed speech-language pathologist department-approved supervisor; and

(J) must only work with assigned cases of the licensed speech-language pathologist department-approved supervisor's caseload.

(i) The licensed assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathologist department-approved supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the department;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling;

(17) sign any formal document relating to the reimbursement for or the provision of speech-language pathology services without the licensed assistant's licensed speech-language pathologist department-approved supervisor's signature; or

(18) use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.

(j) The licensed speech-language pathologist department-approved supervisor of the licensed assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by a licensed assistant and that the licensed assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objectives and review them with the licensed assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the licensed assistant.

(k) A licensed assistant may represent special education and speech pathology at the ARD meetings with the following stipulations.

(1) The licensed assistant shall have written documentation of approval from the licensed, speech-language pathologist department-approved supervisor.

(2) The licensed assistant shall have three years experience as a licensed assistant in the school setting.

(3) The licensed assistant may attend, with written approval of the speech-language pathologist department-approved supervisor, a student's annual review ARD meeting if the meeting involves a student for whom the licensed assistant provides services. If a licensed assistant attends a meeting as provided by this rule, the licensed speech-language pathologist department-approved supervisor is not required to attend the meeting. A licensed speech-language pathologist department-approved supervisor must attend an ARD meeting if the purpose of the meeting is to develop a student's initial IEP or if the meeting is to consider the student's dismissal, unless the licensed speech-language pathologist department-approved supervisor has submitted his or her recommendation in writing on or before the date of the meeting.

(4) The licensed assistant shall present IEP goals and objectives that have been developed by the licensed speech-language pathologist department-approved supervisor and reviewed with the parent by the licensed speech-language pathologist department-approved supervisor.

(5) The licensed assistant shall discontinue participation in the ARD meeting, and contact the department-approved supervising speech-language pathologist, when questions or changes arise regarding the IEP document.

(l) In any professional context the licensee must indicate the licensee status as a licensed speech-language pathology assistant.

(m) The department may audit a random sampling of licensed assistants for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant and licensed speech-language pathologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant and the licensed speech-language pathologist department-approved supervisor, who agreed to accept responsibility for the services

provided by the licensed assistant, shall provide in a manner prescribed by the department the requested proof of compliance to the department.

(3) The licensed assistant and the licensed speech-language pathologist department-approved supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(n) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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SUBCHAPTER G. REQUIREMENTS FOR TEMPORARY CERTIFICATE OF REGISTRATION IN SPEECH-LANGUAGE PATHOLOGY

16 TAC §§111.60, 111.65, 111.66

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE

16 TAC §§111.70, 111.75 - 111.77

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE

16 TAC §§111.80, 111.85 - 111.87

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

16 TAC §§111.90, 111.95 - 111.97

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.90. Assistant in Audiology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in audiology without a current license issued by the department. An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section.

(b) An assistant in audiology shall meet the following requirements:

(1) reach the minimum age of 18 years old and possess a high school diploma or equivalent;

(2) complete the approved 20-hour certification course from the Council for Accreditation of Occupational Hearing Conservation (CAOHC) and earn a passing score on the examination; and

(3) submit the department-prescribed Supervisory Responsibility Statement for an Assistant in Audiology Form, that shall include:

(A) an agreement signed by both the licensed proposed department-approved supervisor (who must meet the requirements set out in the Act and §111.154) and the applicant, to enter into a supervisory relationship, in which the proposed department-approved supervisor agrees to assume responsibility for the applicant's activities, and the applicant agrees to perform only those activities assigned by the department-approved supervisor that are not prohibited under this section; and

(B) a plan for a minimum of twenty-five (25) hours of job-specific competency-based training to be carried out by the department-approved supervisor. Until this training is complete, the licensed assistant in audiology may practice only under direct supervision by the department-approved supervisor.

(c) Upon satisfactory completion of job-specific competency-based training, the department-approved supervisor shall submit the Report of Completed Training for an Assistant in Audiology Form on behalf of the licensed assistant in audiology. After the department approves the report, the licensed assistant may practice only in compliance with the supervision requirements under subsection (e)(3).

(d) The Supervisory Responsibility Statement for an Assistant in Audiology Form must be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the licensed assistant in audiology. The department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) addition of other department-approved supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the licensed assistant in audiology, each licensed audiologist shall be identified and a separate Supervisory Responsibility Statement for an Assistant in Audiology Form be submitted by each department-approved supervisor in a manner prescribed by the department.

(3) A licensed assistant in audiology may renew the license but may not practice until a new Supervisory Responsibility Statement for an Assistant in Audiology Form is approved.

(4) In the event the department-approved supervisor ceases supervision of the licensed assistant in audiology, the licensed assistant in audiology shall stop practicing immediately.

(5) Should the licensed assistant in audiology practice without approval from the department, disciplinary action shall be initiated against the licensed assistant in audiology. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor shall also be initiated.

(e) A licensed audiologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant in audiology.

(1) All diagnostic contacts shall be conducted by the licensed audiologist department-approved supervisor.

(2) Following the initial diagnostic contact, the licensed audiologist department-approved supervisor shall determine whether the licensed assistant in audiology has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks (as referenced in subsection (f)(4)).

(3) The licensed audiologist department-approved supervisor shall be on-site at the licensed assistant in audiology's employment location for at least ten (10) hours per week, or forty (40) hours per month, and provide at least one (1) hour per week or four (4) hours per month of direct supervision, at the location where the assistant is employed. However, the licensed audiologist department-approved supervisor shall be on-site and provide direct supervision for the duties described under subsections (f)(4)(A) - (D). This paragraph applies whether the licensed assistant in audiology is employed full- or part-time. For the purposes of this paragraph, the telehealth and telepractice provisions described under §111.215 may be used except for duties described under subsections (f)(4)(A) - (D) where the department-approved supervisor must be on-site and provide direct supervision. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained by the licensed audiologist department-approved supervisor for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant in audiology's and client's performance. Such documentation may be requested by the department.

(f) Although the licensed audiologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist department-approved supervisor need not be in direct supervision when the licensed assistant is completing the assigned tasks; however, the licensed audiologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed audiologist department-approved supervisor shall keep job descriptions and performance records. Records shall be current and be made available upon request to the department.

(3) The licensed assistant may execute specific components of the clinical hearing program if the licensed audiologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed audiologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(4) Examples of duties that a licensed audiologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in, with the department-approved supervisor on-site, hearing screening including screening otoscopy, tympanometry, otoacoustic emissions procedures and pure tone air conduction procedures, but may not diagnose hearing loss or disorders of the auditory system, or make statements of severity or implication;

(B) assist the audiologist, who must be on-site, with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;

(C) assist the audiologist, who must be on-site, in the evaluation of difficult-to-test patients;

(D) assist the audiologist, who must be on-site, with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures;

(E) maintain clinical records;

(F) prepare clinical materials;

(G) participate with the department-approved supervisor in research projects, staff development, public relations programs, or similar activities as designated and supervised by the department approved supervisor;

(H) maintain equipment by conducting biologic and electroacoustic calibration of audiometric equipment, perform preventative maintenance checks and safety checks of equipment;

(I) explain the proper care of hearing instruments and assistive listening devices to patients;

(J) maintain hearing instruments including cleaning, replacing ear mold tubing, minor hearing instrument repairs, determining need for repair, and performing biologic and electroacoustic checks of hearing instruments;

(K) provide case history and/or self-assessment forms and clarify questions on the forms to patients as needed;

(L) conduct basic record keeping and prepare paperwork for signature by the audiologist;

(M) coordinate ear mold and hearing instrument records or repairs and other orders;

(N) attach hearing aids to computers and use software to verify internal electroacoustic settings; and

(O) perform other non-diagnostic duties not prohibited in paragraph (5), for which the assistant has been trained and demonstrates appropriate skills, as assigned by the licensed audiologist department-approved supervisor.

(5) The licensed assistant shall not:

(A) conduct aural habilitation or rehabilitation activities or therapy;

(B) provide carry-over activities (therapeutically designed transfer of a newly acquired communication ability to other contexts and situations) for patients in aural rehabilitation therapy;

(C) collect data during aural rehabilitation therapy documenting progress and results of therapy;

(D) administer assessments during aural rehabilitation therapy to assess therapeutic progress;

(E) conduct any audiological procedure that requires decision-making or leads to a diagnosis, even under direct supervision;

(F) interpret results of procedures and evaluations, except for screening tests;

(G) make diagnostic statements, or propose or develop clinical management strategies;

(H) make ear impressions;

(I) cause any substance to enter the ear canal or place any instrument or object in the ear canal for the purpose of removing cerumen or debris;

(J) make any changes to the internal settings of a hearing instrument manually or using computer software;

(K) represent audiology at staff meetings or on an admission, review and dismissal (ARD) committee;

(L) attend staffing meetings or ARD committee meetings without the department-approved supervisor being present;

(M) design a treatment program;

(N) determine case selection;

(O) present written or oral reports of client information, except to his or her department-approved supervisor;

(P) refer a client to other professionals or other agencies;

(Q) use any title which connotes the competency of a licensed audiologist; or

(R) practice as a licensed assistant in audiology without a valid Supervisory Responsibility Statement for an Audiology Assistant Form or information on file with the department.

(g) In any professional context the licensee must indicate the licensee's status as a licensed audiology assistant.

(h) A licensed assistant in audiology may not engage in the fitting, dispensing or sale of a hearing instrument; however, a licensed assistant in audiology who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant in audiology license when performing those activities.

(i) The department may audit a random sampling of licensed assistants in audiology for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant in audiology and the licensed audiologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant in audiology and the licensed audiologist department-approved supervisor, who agreed to accept responsibility for the services provided by the licensed assistant in audiology, shall provide the requested proof

of compliance to the department in a manner prescribed by the department.

(3) The licensed assistant in audiology and the licensed audiologist department-approved supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(j) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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SUBCHAPTER K. REQUIREMENTS FOR AUDIOLOGY TEMPORARY CERTIFICATE OF REGISTRATION

16 TAC §§111.100, 111.105, 111.106

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

16 TAC §§111.110, 111.115 - 111.117

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SUBCHAPTER N. CONTINUING PROFESSIONAL EDUCATION

16 TAC §§111.130 - 111.132

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The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.131. Continuing Professional Education--Courses and Credits.

(a) Continuing professional education shall be earned in one of the following areas:

(1) basic communication processes;

(2) speech-language pathology;

(3) audiology;

(4) ethics; or

(5) an area of study related to the areas listed in paragraphs (1) - (4).

(b) Any continuing education activity shall be provided by a department approved provider with the exception of activities referenced in subsection (c). A list of department approved providers shall be made available to all licensees on the department's website.

(c) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (a)(1) - (4) shall be approved for 10 continuing education hours per semester hour, with a maximum of 20 continuing education hours per course.

(d) Completion of the Jurisprudence Examination shall count as one hour of the continuing education requirement for professional ethics per renewal period.

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SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §111.140

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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§111.150 - 111.155

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER Q. FEES

16 TAC §111.160

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SUBCHAPTER R. COMPLAINTS

16 TAC §111.170, §111.171

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SUBCHAPTER S. ENFORCEMENT PROVISIONS

16 TAC §§111.180 - 111.183

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The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.182. Refunds.

(a) The commission or executive director may order an audiologist to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period required by the rules adopted under Subchapter W (regarding Joint Rule Regarding the Sale of Hearing Instruments).

(b) If the 30-day period ends on a Sunday or a holiday, then the 30-day period shall not expire until the next business day.

(c) The licensee shall have thirty (30) days from the date of a consumer's return of the hearing instrument(s) to reimburse the consumer.

(d) In the event that the licensee fails to reimburse the consumer within the prescribed period in subsection (c), then the licensee may be subject to additional penalties and/or sanctions provided for under the Act and rules.

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SUBCHAPTER T. SCREENING PROCEDURES

16 TAC §§111.190 - 111.192

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SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §§111.200 - 111.202

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SUBCHAPTER V. TELEHEALTH

16 TAC §§111.210 - 111.215

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.213. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

(a) The limitations of this section apply to the use of telecommunications technology by speech-language pathologists.

(b) Supervision of a licensed assistant and/or intern in speech-language pathology shall not be undertaken through the use of telecommunications technology unless an exception to this prohibition is secured pursuant to the terms of this section.

(c) An exception to subsection (b) shall be requested by the speech-language pathologist submitting the prescribed alternate supervision request form for review by the department. The department shall approve or not approve the plan. The plan shall be for not more than one year's duration.

(d) If the exception referenced in subsection (c) is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the department. The department shall approve or not approve the plan.

(e) Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
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For further information, please call: (512) 463-8179

SUBCHAPTER W. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS

16 TAC §111.220

The new rule is adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§111.220. Requirements Regarding the Sale of Hearing Instruments.

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed audiologist or licensed intern in audiology may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed audiologist or licensed intern in audiology and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed audiologist or licensed intern in audiology in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice.";

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed audiologist or intern in audiology, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202";

(9) the printed name, license type, signature and license number of the licensed audiologist or licensed intern in audiology who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b); and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this section, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER X. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §§111.230 - 111.232

The new rules are adopted under Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 112, Subchapter A, §112.1 and §112.2; Subchapter B, §§112.10 - 112.14; Subchapter C, §§112.20 and 112.23 - 112.26; Subchapter D, §112.31 and §112.33; Subchapter E, §§112.41, 112.42 and 112.44; Subchapter F, §§112.50 - 112.53; Subchapter G, §112.60 and §116.61; Subchapter H, §§112.70 - 112.72; Subchapter I, §112.80; Subchapter J, §§112.90 - 112.98; Subchapter L, §112.110; Subchapter M, §112.120; Subchapter N, §§112.130 - 112.134; Subchapter O, §112.140; and Subchapter P, §112.150, regarding the Hearing Instrument Fitters and Dispensers program, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 399). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 112, Subchapter C, §112.21 and §112.22; Subchapter D, §112.30 and §112.32; and Subchapter E, §112.40 and §112.43 with changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 399). These rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Hearing Instrument Fitters and Dispensers program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 112 are necessary to implement S.B. 202 and to regulate the Hearing Instrument Fitters and Dispensers program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 141, regarding Fitting and Dispensing of Hearing Instruments.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Hearing Instrument Fitters and Dispensers program on October 3, 2016.

Adopted new Subchapter A provides the General Provisions for the proposed new rules.

Adopted new §112.1 provides the statutory authority for the Commission and Department to regulate hearing instrument fitters and dispensers.

Adopted new §112.2 creates the definitions to be used in the hearing instrument fitters and dispensers program.

Adopted new Subchapter B creates the Hearing Instrument Fitters and Dispensers Advisory Board.

Adopted new §112.10 provides the composition and membership requirements of the advisory board.

Adopted new §112.11 details the duties of the advisory board.

Adopted new §112.12 sets the terms and vacancies process for advisory board members.

Adopted new §112.13 provides for a presiding officer of the advisory board.

Adopted new §112.14 provides details regarding advisory board meetings.

Adopted new Subchapter C establishes the examination requirements for the program.

Adopted new §112.20 provides general examination requirements.

Adopted new §112.21 explains the examination qualifications.

Adopted new §112.22 details the different examinations and content.

Adopted new §112.23 details the examination scores and notices regarding results.

Adopted new §112.24 explains the process if an applicant fails an examination.

Adopted new §112.25 establishes the qualifications for examination proctors.

Adopted new §112.26 details the requirements for the Jurisprudence Examination.

Adopted new Subchapter D establishes the requirements to obtain a hearing instrument fitter and dispenser license.

Adopted new §112.30 details the application and eligibility requirements for the hearing instrument fitter and dispenser license.

Adopted new §112.31 explains the process for issuing a hearing instrument fitter and dispenser license.

Adopted new §112.32 details the license terms and renewal requirements for the hearing instrument fitter and dispenser license.

Adopted new §112.33 provides the application requirements for a license holder from another state seeking a Texas hearing instrument fitter and dispenser license.

Adopted new Subchapter E establishes the requirements to obtain an apprentice permit.

Adopted new §112.40 details the application and eligibility requirements for an apprentice permit.

Adopted new §112.41 explains the process for issuing an apprentice permit.

Adopted new §112.42 details the permit terms and extension requirements for the apprentice permit.

Adopted new §112.43 explains the supervision requirements for the apprentice permit.

Adopted new §112.44 provides the continuing education requirements for an apprentice permit.

Adopted new Subchapter F establishes the requirements to obtain a temporary training permit.

Adopted new §112.50 details the application and eligibility requirements for a temporary training permit.

Adopted new §112.51 explains the process for issuing a temporary training permit.

Adopted new §112.52 details the permit terms and extension requirements for the temporary training permit.

Adopted new §112.53 explains the supervision and temporary training requirements for a temporary training permit.

Adopted new Subchapter G establishes the financial security requirements.

Adopted new §112.60 explains the criteria for filing a surety bond or other form of financial security.

Adopted new §112.61 provides information on filing a claim and recovery under a surety bond or other form of financial security.

Adopted new Subchapter H establishes the continuing education requirements for this program.

Adopted new §112.70 details the hours and courses for continuing education requirements.

Adopted new §112.71 explains the continuing education auditing process and the records that must be kept.

Adopted new §112.72 establishes the criteria for continuing education providers.

Adopted new Subchapter I establishes the responsibilities of the Commission and the Department.

Adopted new §112.80 requires the Commission to adopt rules necessary to implement the Hearing Instrument Fitters and Dispensers program, including rules governing changes to the standards of practice rules.

Adopted new Subchapter J establishes the responsibilities of the licensee and the code of ethics.

Adopted new §112.90 specifies general responsibilities of the licensees.

Adopted new §112.91 requires all licensees to notify the Department of a change of name, address or other pertinent information.

Adopted new §112.92 details the information that all licensees must provide to clients and the public.

Adopted new §112.93 provides requirements regarding the display of the license.

Adopted new §112.94 prohibits false, misleading or deceptive advertising by licensees.

Adopted new §112.95 requires obtaining information on prospective candidates for amplification.

Adopted new §112.96 requires a license holder or permit holder to comply with federal regulations regarding hearing instruments.

Adopted new §112.97 establishes requirements regarding sound-level measurements, audiometers, and audiometric testing.

Adopted new §112.98 creates a code of ethics for this program.

Adopted new Subchapter L establishes fees for the Hearing Instrument Fitters and Dispensers program.

Adopted new §112.110 details all fees associated with the Hearing Instrument Fitters and Dispensers program as regulated by the Commission and the Department.

Adopted new Subchapter M creates a subchapter to address complaints.

Adopted new §112.120 provides that the Commission will adopt rules regarding complaints involving standard of care.

Adopted new Subchapter N establishes enforcement provisions.

Adopted new §112.130 allows for administrative penalties and sanctions.

Adopted new §112.131 provides the authority to enforce Texas Occupations Code, Chapter 402 and this chapter.

Adopted new §112.132 provides the authority to order refunds for returned hearing instruments.

Adopted new §112.133 allows for a civil penalty to be assessed against persons who violate this chapter.

Adopted new §112.134 requires a license holder or permit holder to surrender his or her license or permit to the Department on demand.

Adopted new Subchapter O establishes joint rules regarding the sale of hearing instruments. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the sale of hearing instruments.

Adopted new §112.40 details the requirements regarding the sale of hearing instruments.

Adopted new Subchapter P establishes joint rules for fitting and dispensing of hearing instruments by telepractice. Texas Occupations Code Chapters 401 and 402 require the Commission, with the assistance of the Speech-Language Pathologists and Audiologist Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, to adopt rules to establish requirements regarding the fitting and dispensing of hearing instruments by telepractice.

Adopted new §112.150 details the requirements regarding the fitting and dispensing of hearing instruments by telepractice.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 399). The deadline for public comments was February 8, 2016. The Department received comments from four interested parties, consisting of three individuals and the Texas Hearing Aid Association (THAA) on the proposed rules during the 30-day public comment period.

Comment--The Department received a comment for §112.2, Definitions. The commenter suggested adding new definitions for "actual clients" and "classroom continuing education," changing the time periods under "contact hour" and "continuing education hour" to be defined the same as 50 minutes, adding language regarding telepractice to the definition of "selling of hearing instruments by mail," and revising the definition of "specific product information."

Department Response--In response to the comment, the Department did not add new definitions for "actual clients" and "classroom continuing education" at this point in the rulemaking process. These definitions are not in the current DSHS rules. Such additions would need to be considered in light of the substantive rules in which the terms are used to determine if there is any confusion. The Department did not revise the definitions of "contract hour" and "continuing education hour." Contact hour is defined in statute as 55 minutes under Occupations Code §402.254(d) and is used for purposes of supervision. Continuing education hour is defined as 50 minutes in the Department's continuing education rule at 16 TAC §59.30(k) and is used for purposes of continuing education. The Department did not revise the current definitions of "selling of hearing instruments" or "specific product information." The suggested revisions are not part of the current DSHS rules. Any changes to the definitions need to be further considered in light of the substantive rules in which the terms are used. The Advisory Board also discussed that this change may need to be coordinated as part of discussions on the joint rules with the Speech-Language Pathologists and Audiologists Advisory Board.

Comment--The Department received a comment for §112.30, Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements. The commenter stated that this section does not match the current Department of Public Safety procedures for electronic fingerprinting at a third party vendor and requested that the section be reworked and clarified.

Department Response--In response to the comment, the Department has added clarifying language that the applicant submit the completed set of fingerprints to the Department of Public Safety or its designee in a manner prescribed by the Department of Public Safety.

Comment--The Department received a comment for §112.32(c)(5), Hearing Instrument Fitter and Dispenser License--License Term; Renewals. The commenter proposed revising the current language to state that the calibration certificate be traceable to the current standards of the American National Standards Institute (ANSI)-Specification of Audiometers.

Department Response--Section 112.32(c)(5) implements Occupations Code §401.301(f) and reflects the statutory language. In response to this comment, the Department added clarifying language that the equipment be calibrated in accordance with rule §112.97. Section 112.97 requires audiometers and audiometric testing devices to meet the current standards of American National Standards Institute (ANSI) or the International Electrotechnical Commission. Both are allowable standards for calibration under the rules.

Comment--The Department received a comment for §112.43(a), Apprentice Permit--Supervision Requirements. The commenter proposed adding "direct or indirect" before the word "supervision" to specify that an "apprentice permit holder shall work under the direct or indirect supervision of a license holder for at least one year."

Department Response--In response to this comment, the comment from THAA discussed below regarding §112.43(d), and the Advisory Board's recommendation, the Department

has added "direct or indirect" before the word "supervision" under §112.43(a). This rule implements the statutory language under Occupations Code §401.207(c) by specifying the type of supervision appropriate for apprentices. The Advisory Board discussed that either type of supervision may be provided for apprentices. The Advisory Board also discussed the supervision required under the statute for temporary training permit holders, which includes both direct and indirect supervision.

Comment--The Department received a comment for §112.50(c)(1), Temporary Training Permit--Application and Eligibility Requirements. The commenter proposed adding language to the end of the requirement that the applicant must have never taken the examination administered under this chapter "in the twelve months before the application date."

Department Response--The Department did not make a change to the proposed rule in response to this comment because of the statutory requirement under Occupations Code §402.251(a)(1), which states: "The department shall issue a temporary training permit to a person who: (1) has never taken the examination administered under this chapter;..."

Comment--The Department received a comment for §112.53(g)(8), Temporary Training Permit--Permit Term; Extension. The commenter proposed changing the language regarding the required contact hours for laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments.

Department Response--The language under proposed rule §112.53(g)(8) reflects the language in the statute under §402.254(c)(8) and the current DSHS rule. The Department did not make any change to the proposed rule in response to this comment.

Comment--One commenter stated that the commenter did not see in the rule a price for the written examination and asked if the fee is based on whatever IHS contracts the exam fee to be.

Department Response--This comment relates to §112.110, Fees. The written examination fee is not paid to the Department but is paid to the International Hearing Society (IHS), the third party entity that administers the examination as specified under §112.22(b). IHS determines the written examination fee, therefore the written examination fee in not included under §112.110, Fees. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter stated that it appears that the one year period of waiting for full licensure after passing all exams is no longer required. The commenter also asked whether there is a time period of experience that needs to be obtained before someone is able to supervise an apprentice. The commenter stated that many other states require a person to be licensed for three years before they can supervise. The commenter asked if there could be a negative effect to the profession.

Department Response--Under Occupations Code §402.207(c) and rule §112.43(a), Apprentice Permit--Supervision Requirements, an apprentice permit holder must work under the supervision of a license holder for at least one year. This one year period occurs after passing the examinations and obtaining the apprentice permit. Regarding the experience necessary to supervise, there are no statutory or rule requirements in Texas regarding the amount of experience or length of licensure required in order to supervise apprentices. Section 112.43(d) requires the person to be authorized to supervise permit holders and to hold a valid license to fit and dispense hearing instruments. The Advisory Board commented that by the time the person obtains the full license, the person has already been practicing as a temporary training permit holder and as an apprentice permit holder under the Texas requirements. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The Texas Hearing Aid Association (THAA) submitted comments on four sections of the proposed rules.

Under §112.43(d), Apprentice Permit-Supervision Requirements, the THAA stated that the current DSHS rule at 22 TAC §141.8(b)(5) states that the apprentice must be under the "indirect" supervision of an individual authorized to supervise an apprentice permit holder. However, under the TDLR proposed rule, the word "indirect" has been omitted, leaving in doubt whether an apprentice should be under "direct" or "indirect" supervision as defined in §112.2(13) and §112.2(17). "Supervision" by itself is not defined. The THAA explained the standard practice regarding indirect supervision of apprentices and urged the Department to reinsert the word "indirect" into the rule.

Department Response--In response to this comment from THAA, the comment from the interested party under the first comment listed above regarding §112.43(a), and the Advisory Board recommendation, the Department inserted the words "direct or indirect" before the word "supervision" under §112.43(d) to clarify the type of supervision that is provided to apprentices. The Advisory Board discussed that either type of supervision may be provided for apprentices.

Comment--Under §112.21(b), Examination Qualification, the THAA stated that the reference to the apprentice permit may be incorrect, because this rule would not apply to an apprentice permit holder who has already taken and passed both exams. The reference to apprentice probably should be changed to reflect the temporary permit holder in §112.50.

Department Response--In response to the comment, the Department has revised the language under §112.21(b) to clarify that the reference to the applicant for an apprentice permit is the temporary training permit holder and has removed the text in the parentheses to eliminate confusion. The Department has also changed the language to narrow the scope of the documents to be reviewed for a temporary training permit holder when qualifying to take the examination. For the temporary training permit holder, the contact hours documentation under §112.53 will be reviewed. In addition, the Department has separated subsection (b) into two subsections to clarify the requirements for temporary training permit holders and for out of state license holders. The subsections that follow under §112.21 have been re-lettered accordingly.

The changes to §112.21(b) also relate to the changes made under §112.40 discussed below, both of which will reflect and retain the current DSHS process for examination qualification. Under the current DSHS processes, for temporary training permit holders, the examination qualification process is a separate step that occurs before the permit application process. The TDLR proposed rules had combined the examination qualification process into the permit application process. The Department has amended the proposed rules to retain the current DSHS processes and to assist in the transfer of the program from DSHS to the Department.

Comment--Under §112.21(e), Examination Qualifications, the proposed rule states that an applicant must take and pass the examination and complete all licensing requirements within one year after the date the application is received by the Department. The THAA urged the Department to add a sentence to the end of this rule to clarify that additional time to complete all licensing requirements may be available to apprentices and temporary permit holders due to the extensions allowed under §112.42 for apprentice permits and §112.52 for temporary training permits.

Department Response--The proposed rule is standard language across all of the Department's programs and is in the procedural rules at 16 TAC §60.30. This rule requires applicants to complete all licensing requirements, including examination requirements, within one year, and if they do not, then they have to reapply. Occupations Code Chapter 402 and the rules at §112.42 and §112.52 allow for permits to be extended beyond one year. Under §112.21(e) as published, the Department added the following sentence to the end of the proposed rule in response to the THAA comment and suggested language. "The department may extend this period as prescribed under §112.42 and §112.52." As part of the re-lettering of the subsections under §112.21, this subsection is now §112.21(f).

Comment--Under §112.40, Apprentice Permit--Application and Eligibility Requirements, the THAA urged the Department to consider removing subsections (c)(2) (proof of age 18) and (c)(4) (education records), since the information is already on file with the Department in the applicant's temporary training permit application, and deleting subsection (c)(3) (completed application form), since it is already being requested in subsection (a). THAA stated that subsections (e) and (f) are unnecessary since an applicant for an apprentice permit has already taken and passed the exam.

Department Response--In response to the comment and based on the Advisory Board discussion, the Department removed §112.40(c)(2) and §112.40(c)(4), since those documents were already submitted as part of the temporary training permit application and the applicant must hold a current temporary training permit to apply for an apprentice permit. To be consistent with the changes made under §112.40(c)(4), the Department also removed the education records required under §112.30(c)(3), regarding application requirements for a hearing instrument fitter and dispenser license.

In addition, the Department removed §112.40(e) and §112.40(f) to reflect the current DSHS process in which the examination qualification process is separate from the permit application process. The Department did not remove §112.40(c)(3), since §112.40(a) is a general statement regarding the documentation submitted to the Department and §112.40(c)(3) specifically requires submission of the department-approved application form.

Comment--The Department received a comment regarding §112.97, Sound-Level Measurements--Audiometers and Audiometric Testing, but the commenter withdrew the comment at the Advisory Board meeting on February 26, 2016.

Department Response--Since the comment was withdrawn, the Department does not have a response to this comment and will not make any changes based on the comment.

Comment--The Department received a comment regarding §112.110, Fees. The commenter expressed concerns about the annual continuing education provider fee of $200. The commenter questioned the benefits of the fee and stated that the fee was an arbitrary number chosen by the Advisory Board. The commenter stated that the fee discouraged licensees from leaving the state to acquire continuing education and that licensees would be better served by having the Texas Hearing Aid Association approve the continuing education courses and collect the money. The commenter stated that the audiologists and speech pathologists use their trade association to approve continuing education classes, and asked why the hearing aid dispensers could not do the same.

Department Response--DSHS had the same fee, but it was called the continuing education sponsor fee. The DSHS fee was $500/year. The fee of $200/year is the Department's continuing education provider application fee and renewal fee. This fee was set based on the costs of administering this service. This fee has been adopted by the Commission and is prescribed under the Department's Continuing Education Provider Rules at 16 TAC §59.80. This annual fee applies to those licensing programs which have continuing education requirements and for which the Department approves the continuing education providers and courses. DSHS currently reviews and approves the continuing education providers and courses for the hearing instrument fitters and dispensers program. The Department will continue to do so as part of the transfer of the program from DSHS to the Department and in compliance with the statutory requirements under Occupations Code §402.303, which requires the Department to review and approve continuing education sponsors (providers) and courses.

The Hearing Instrument Fitters and Dispensers Advisory Board (Advisory Board) was scheduled to meet on November 24, 2015. Although the board lacked a quorum, the members present discussed a draft of the proposed rules with the Department before they were published in the *Texas Register* for public comment under the authority of the Executive Director.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 26, 2016, advisory board meeting.

The Advisory Board met on February 26, 2016, to discuss the proposed rules with Department staff and staff of DSHS and to review the rule publication and the public comments received. The Department and the Advisory Board recommended changes to the proposed rules based on the public comments received and the Advisory Board discussion. The Advisory Board voted and unanimously recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes. At its meeting on April 13, 2016, the Commission adopted the proposed rules with changes as recommended by the Advisory Board and the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §112.1, §112.2

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

16 TAC §§112.10 - 112.14

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. EXAMINATIONS

16 TAC §§112.20 - 112.26

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§112.21. Examination Qualifications.

(a) An applicant must qualify to take the written examination and the practical examination. The applicant must also take the Jurisprudence Examination as described under §112.26, but the applicant does not need to qualify to take the Jurisprudence Examination.

(b) The department will review a temporary training permit holder's documentation as prescribed under §112.53 to determine whether the applicant qualifies to take the written and practical examinations.

(c) The department will review an out of state license holder's application and other submitted documentation as prescribed under §112.33 to determine whether the applicant qualifies to take the practical examination.

(d) Pursuant to Texas Occupations Code §402.203(c), the department may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

(e) The department or department's designee will notify the applicant who qualifies to take the examinations.

(f) An applicant must take and pass the examinations and complete all licensing requirements within one year after the date the application is received by the department. The department may extend this period as prescribed under §112.42 and §112.52.

§112.22. Examination Tests and Contents.

(a) The examination required under the Act shall consist of a written examination, a practical examination, and a Jurisprudence Examination as described under §112.26.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written examination is the International Licensing Examination for Hearing Instrument Dispenser, a national examination administered by the International Hearing Society.

(2) The practical examination is administered by the department or the department's designee.

(3) The Jurisprudence Examination is developed by the department and administered by the department's designee.

(c) The examination under subsection (a), will test the following areas as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

(4) pure tone audiometry, including air conduction testing and bone conduction testing;

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone conduction, and speech;

(7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;

(8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) post-counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal; and

(14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

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SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE

16 TAC §§112.30 - 112.33

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§112.30. Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the supervisor's agreement form that has been completed by the apprentice permit holder and the supervisor(s), unless previously submitted to the department; and

(3) the fee required under §112.110.

(d) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety or its designee, in a manner prescribed by the Department of Public Safety, for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(e) The commission or executive director may deny an application based on the grounds for denial under Texas Occupations Code §402.501.

§112.32. Hearing Instrument Fitter and Dispenser License--License Term; Renewals.

(a) A hearing instrument fitter and dispenser license is valid for two years after the date of issuance and may be renewed every two years.

(b) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a hearing instrument fitter and dispenser license, a license holder must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete twenty (20) hours of continuing education as required under §112.70;

(4) comply with the continuing education audit process described under §112.71, if selected for an audit;

(5) provide proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician in accordance with §112.97, within one year prior to the renewal date; and

(6) submit the fee required under §112.110.

(d) The commission or department may deny the renewal of the license pursuant to Texas Occupations Code §402.501.

(e) Except as provided under subsection (d), a license that is not revoked or suspended shall be renewed provided that all other requirements are met.

(f) A person whose license has expired may renew the license in accordance with §60.31 and §60.83 of this title.

(g) A person whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(h) The department shall issue a renewal card to a license holder who has met all the requirements for renewal. The license holder must display the renewal card in association with the license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. APPRENTICE PERMIT

16 TAC §§112.40 - 112.44

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

§112.40. Apprentice Permit--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for an apprentice permit must:

(1) hold a current temporary training permit;

(2) submit a completed application on a department-approved form;

(3) submit the supervisor's agreement form that has been completed by the applicant and the supervisor(s);

(4) pass all parts of the examination required under §112.22;

(5) submit a certificate of completion of the Jurisprudence Examination under §112.26; and

(6) pay the apprentice permit fee required under §112.110.

(d) An applicant for an apprentice permit must successfully pass a criminal history background check.

§112.43. Apprentice Permit--Supervision Requirements.

(a) An apprentice permit holder shall work under the direct or indirect supervision of a license holder for at least one year.

(b) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(c) A supervisor of an apprentice permit holder is responsible for services to the client that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with the Act and this chapter.

(d) The apprenticeship must be done under the direct or indirect supervision of an individual authorized to supervise permit holders who holds a valid license to fit and dispense hearing instruments in the State of Texas under Texas Occupations Code, Chapter 401 or 402, other than a person licensed under §401.311 or §401.312.

(e) The supervisor must submit written notification of cessation of supervision to the department and the apprentice permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) The apprentice permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor on a department-approved form or in a manner prescribed by the department.

(g) The supervisor's agreement form must be completed by the apprentice permit holder and the supervisor or supervisors on a department-approved form or in a manner prescribed by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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SUBCHAPTER F. TEMPORARY TRAINING PERMIT

16 TAC §§112.50 - 112.53

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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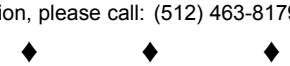

SUBCHAPTER G. FINANCIAL SECURITY REQUIREMENTS

16 TAC §112.60, §112.61

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS

16 TAC §§112.70 - 112.72

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER I. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §112.80

The new rule is adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE

16 TAC §§112.90 - 112.98

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER L. FEES

16 TAC §112.110

The new rule is adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER M. COMPLAINTS

16 TAC §112.120

The new rule is adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §§112.130 - 112.134

The new rules are adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER O. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS

16 TAC §112.140

The new rule is adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §112.150

The new rule is adopted under Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 401 and 402. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 114. ORTHOTICS AND PROSTHETICS

16 TAC §§114.1, 114.10, 114.20 - 114.30, 114.40, 114.50, 114.65 - 114.70, 114.80, 114.90, 114.95

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 114, §§114.1, 114.20 - 114.22, 114.24, 114.26 - 114.28,

114.30, 114.40, 114.65 - 114.70, 114.80 and 114.95, regarding the Orthotics and Prosthetics program, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 417). The rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 114, §§114.10, 114.23, 114.25, 114.29, 114.50 and 114.90 with changes to the proposed text as published in January 8, 2016, issue of the *Texas Register* (41 TexReg 417). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Orthotics and Prosthetics program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 114 are necessary to implement S.B. 202 and to regulate the Orthotics and Prosthetics program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 821, regarding the Orthotics and Prosthetics program.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Orthotics and Prosthetics program on October 3, 2016.

Adopted new §114.1 establishes the authority to administer and enforce this chapter.

Adopted new §114.10 creates the definitions to be used in this chapter.

Adopted new §114.20 develops the application guidelines for this program.

Adopted new §114.21 determines when a license or registration is required and explains the applicable process.

Adopted new §114.22 establishes the licensing examination for a Prosthetist, Orthotist, or Prosthetist/Orthotist license.

Adopted new §114.23 creates the requirements for a uniquely qualified person to obtain a license as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

Adopted new §114.24 details the academic and residency requirements for those seeking to obtain a license as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

Adopted new §114.25 establishes the terms for temporary licenses.

Adopted new §114.26 explains student registration.

Adopted new §114.27 details the assistant license requirements.

Adopted new §114.28 establishes the requirements for the technician registration.

Adopted new §114.29 provides the requirements for a facility to be accredited.

Adopted new §114.30 creates professional clinical residency requirements.

Adopted new §114.40 details the renewal requirements and process for licensees, registrants and accredited facilities.

Adopted new §114.50 establishes continuing education requirements for the program.

Adopted new §114.65 creates the membership requirements for the Orthotists and Prosthetists Advisory Board.

Adopted new §114.66 explains the duties of the Orthotists and Prosthetists Advisory Board.

Adopted new §114.67 establishes the terms and vacancies process for the Orthotists and Prosthetists Advisory Board.

Adopted new §114.68 provides for a presiding officer of the Orthotists and Prosthetists Advisory Board.

Adopted new §114.69 explains meeting requirements for the Orthotists and Prosthetists Advisory Board.

Adopted new §114.70 creates responsibilities for licensees.

Adopted new §114.80 establishes fees that apply to this program.

Adopted new §114.90 creates professional standards for the program and details the basis for disciplinary action.

Adopted new §114.95 provides information regarding complaints.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 417). The deadline for public comments was February 8, 2016. The Department received comments from two interested persons and the Texas Medical Association, the Texas Orthopaedic Association, and the Coalition for Nurses in Advanced Practice on the proposed rules during the 30-day public comment period.

Comment--The Texas Medical Association and the Texas Orthopaedic Association recommended that the phrase "or a licensed physician" be added at the end of the definition of "assistant patient care service" at §114.10(4).

Department Response--Texas Occupations Code, Chapter 605, authorizes the practice of orthotics and prosthetics only by licensed practitioners or by qualified persons who are under the supervision of a licensed practitioner. The Department may not expand the scope of its regulatory authority under Chapter 605 to authorize physicians to supervise the practice of orthotics and prosthetics. No change to the rule was made in response to this comment.

Comment--The Texas Medical Association and the Texas Orthopaedic Association recommended that the definition of "assistant patient care service" be changed to specify that it does not include minimal self-adjustment performed by the patient, the patient's personal caregiver(s), or the supplier of the device. The commenters raised the concern that the definition would exclude those who are not licensed assistants from furnishing or adjusting off-the-shelf devices.

Department Response--The definition lists the activities a licensed assistant may perform, and the activities of the patient or the patient's caregiver in relation to the patients' orthosis are not relevant to the definition. The Department does not regulate the actions of suppliers when performing activities that are authorized under other law or which are not regulated by

the Department. No change to the rule was made in response to this comment.

Comment--The Texas Medical Association and the Texas Orthopaedic Association recommended that a definition for "minimal self-adjustment" be added to the rules, and provided the text of the definition. The definition would include adjustment by the patient, the patient's caregiver, or the supplier of the device. The commenters point out that the definition of "minimal self-adjustment" in the federal rules for the Centers for Medicare and Medicaid Services includes adjustments made by the patient, the patient's caregiver, or by a supplier of the device.

Department Response--The term "minimal self-adjustment" is used only once in the rules, in the definition of "off the shelf." The inclusion of the supplier in the definition would not be consistent with the meaning of "self-adjustment." The term "minimal self-adjustment" takes its common meaning in the definition and is self-explanatory. The context and purpose of the federal definition is unrelated to the regulation of the practice of orthotics and prosthetics in Texas and therefore is not relevant to the proposed rule. No change was made to the rule in response to this comment.

Comment--The Texas Medical Association and the Texas Orthopaedic Association recommended that the definition for "off-the-shelf" orthotic devices be revised to include language stating that these devices are not included within the categories of "custom-fabricated" and "custom-fitted" devices.

Department Response--The exclusion of the use of an off-the-shelf orthosis to make a custom-fabricated or custom-fitted orthosis or prosthesis could hamper the ability of a practitioner to develop the best orthosis or prosthesis for the patient. An off-the-shelf item could be the "raw material" on which the practitioner uses his or her special expertise to create a custom-fitted or even custom-fabricated device, transforming it from off-the-shelf to custom. The meaning of the terms is clear without the addition of the suggested text. No change has been made to the rule in response to this comment.

Comment--The Texas Medical Association and the Texas Orthopaedic Association recommended that the rules be amended to contain definitions for "custom-fabricated" and "custom-fitted."

Department Response--These terms are defined in the Texas Occupations Code, Chapter 605, §605.002. For clarity and brevity the Department ordinarily does not repeat statutory definitions in the rules. However, the definitions of "custom-fabricated" and "custom-fitted" are now included in the rules for ease of reference.

Comment--The Coalition for Nurses in Advanced Practice recommended four amendments to clarify that health care professionals other than licensed physicians may prescribe or order orthotics and prosthetics.

Department Response--The Department agrees that the recommended changes, with some modification, have merit and provide clarification without affecting the meaning or impact of the rules. Changes have been made to §§114.10, 114.90(c)(6), and 114.90(d)(24).

Comment--One commenter recommended that the registration of technicians become mandatory, not discretionary, based on his historical perspective of the regulation of orthotics and prosthetics. The commenter offered a number of justifications to support mandatory registration.

Department Response--Texas Occupations Code, Chapter 605 has never been interpreted to require the registration of all technicians. Likewise, the statute does not bar technicians from practicing without a registration. The reinterpretation of the statute would not only be unsupported by the text of the statute, it would represent a reversal in regulation that has been in place and is known to the profession and to the legislature. The legislature has chosen not to disturb the existing regulatory approach, and the Department has no basis on which to do so. The activities of technicians in the practice of orthotics and prosthetics are the responsibility of the practitioners who prescribe orthoses and prostheses and who treat the patients, regardless of the technician's registration status. Practitioners are free to choose whether to require registration for their technicians as a condition of employment. No change has been made to the rule in response to this comment.

Comment--One commenter made recommendations for wording changes to provide for the use of hand sanitizers.

Department Response--The Department agrees with the recommendation and changes were made to §114.29(j) in response to the comment.

Comment--One commenter recommended that the term "major repairs" as used in §114.29(o)(2) be defined.

Department Response--The text has been modified to state "repairs" only, in order to include any repairs, in response to this comment.

The Orthotists and Prosthetists Advisory Board met on November 16, 2015, to discuss a draft of the proposed rules with the Department before they were published in the *Texas Register* for public comment.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 18, 2016, advisory board meeting. The Orthotists and Prosthetists Advisory Board met again on February 18, 2016, to discuss the proposed rules with Department staff and staff of DSHS and to review the rule publication and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes. At its meeting on April 13, 2016, the Commission adopted the proposed rules with changes as recommended by the Board.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 605, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the adoption.

§114.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in this chapter:

(1) Act--The Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605.

(2) Advisory board--The Orthotists and Prosthetists Advisory Board.

(3) Ancillary patient care service--Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.

(4) Assistant patient care service--Includes comprehensive orthotic patient care (initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of custom fitted and off-the-shelf orthotic devices) involving pedorthics, compression garments, non-custom fabricated orthoses (except those used to treat scoliosis or an unstable fracture or dislocation), and knee orthoses; and comprehensive prosthetic care involving compression garments, when provided under the appropriate supervision of a practitioner licensed in the practice area in which the service is being provided.

(5) Board--The Orthotists and Prosthetists Advisory Board.

(6) CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

(7) Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner.

(8) Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Critical care events--Initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of the custom-fabricated prosthesis or orthosis.

(11) Custom-fabricated--An orthosis or prosthesis designed, prescribed, fabricated, fitted and aligned for a specific individual in accordance with sound biomechanical principles.

(12) Custom-fitted--An orthosis or prosthesis adjusted, prescribed, fitted and aligned for a specific individual in accordance with sound biomechanical principles.

(13) Department--The Texas Department of Licensing and Regulation.

(14) Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery.

(15) Executive director--the executive director of the department.

(16) Extensive orthotic practice--Includes the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthosis including plastic forming, metal contouring, cosmetic covering, and assembling; the fitting and assessment of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the training and instruction of patients in the use and care of the orthosis; and maintaining current encounter notes and patient records.

(17) Extensive prosthetic practice--Includes the evaluation of patients with a wide range of upper and lower limb deficiencies; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, assembly, and aligning; the fitting and assessment of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the training and instruction of patients in the use and care of the prosthesis; and maintaining current encounter notes and patient records.

(18) Health care professional--A chiropractor, podiatrist, or advanced practice registered nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Texas Occupations Code, Chapter 157, Subchapter B and rules adopted by the Texas Medical Board.

(19) Indirect supervision--Supervision provided to a licensed assistant or to a person in clinical residency for a professional by a practitioner who provides appropriate on-site supervision as approved by the accredited facility's practitioner in charge.

(20) License--Includes a license, registration, certificate, or other authorization issued under the Act to engage in an activity regulated under the Act, excluding accreditation of a facility.

(21) Licensed physician--A physician licensed and in good standing with the Texas Medical Board.

(22) Licensee--Includes a person holding a current license or registration issued by the department, to engage in an activity regulated under the Act.

(23) NCOPE--The National Commission on Orthotic and Prosthetic Education.

(24) Off-the-shelf--A prescribed, prefabricated orthosis that requires minimal self-adjustment by the patient or by a personal caregiver(s) for appropriate use and does not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(25) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(26) Orthotist in charge--An orthotist who is designated on the application for accreditation as the person who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of orthotics in the facility.

(27) Patient education--Patient education involves information, instructions, training, and review for understanding that are provided to the patient or caregiver, including donning, doffing, use, care, sanitation, spinal and cranial orthotic training, upper extremity orthotic and prosthetic training, lower extremity orthotic and prosthetic gait training, normal wear and tear, schedule for continuing care, and indications for return to physician or health care professional.

(28) Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(29) Practitioner in charge--The orthotist in charge, the prosthetist in charge, or the prosthetist/orthotist in charge.

(30) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(31) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(32) Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the person who has the authority

and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(33) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the person who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(34) Registered orthotic technician--A person registered under the Act who fabricates, assembles, or services orthoses under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(35) Registered prosthetic technician--A person registered under the Act who fabricates, assembles, or services prostheses under the direction of a licensed prosthetist, licensed prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(36) Registered prosthetic/orthotic technician--A person registered under the Act who fabricates, assembles, or services prostheses and orthoses under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(37) Safety manager--An employee of an accredited facility who is assigned to develop, carry out and monitor an accredited facility's safety program.

(38) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

(39) Voluntary charity care--The practice of a licensed practitioner without compensation or expectation of compensation.

§114.23. Requirements for Uniquely Qualified Person Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Purpose. The purpose of this section is to describe the unique qualifications a person must possess to qualify for licensure as a prosthetist, orthotist or prosthetist/orthotist under the Orthotics and Prosthetics Act (Act), §605.254(a)(2).

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is qualified to perform prosthetic or orthotic care.

(c) The department will determine whether a person is uniquely qualified on a case-by-case basis based on the information supplied by the applicant and other information deemed relevant by the department.

(d) Applicants may apply for licensure as a uniquely qualified person in accordance with paragraph (1), (2), or (3):

(1) Applicants with at least fifteen (15) years of extensive orthotic or prosthetic experience in the discipline for which they have applied. These applicants must demonstrate proof of having taken at least seventy-five (75) hours of continuing education that meets the requirements of §114.50, within the five years before application.

(2) Applicants with at least fifteen (15) years of extensive orthotic experience and fifteen years of extensive prosthetic experience who are applying for the prosthetist/orthotist license. These applicants may accumulate extensive orthotic experience concurrently with the accumulation of extensive prosthetic experience. These applicants must demonstrate proof of having taken at least one hundred (100) hours of continuing education that meets the requirements of §114.50, in both orthotics and prosthetics, within the five years before application.

(3) Applicants who meet the academic requirements under §114.24, but who have not completed a professional clinical residency meeting NCOPE requirements. These applicants shall submit proof of at least two years of applicable orthotic or prosthetic experience within the five years before application that was obtained under supervision of a licensed or certified orthotist or prosthetist in the discipline for which they have applied.

(e) The following is applicable to persons applying for licensure under subsection (d)(1) and (2).

(1) The practitioner with extensive orthotic practice experience must, within the limits set by the department, demonstrate application of all of the elements of extensive orthotic practice, as defined in §114.10(16), to at least two-thirds of the following types of orthoses: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(2) The practitioner with extensive prosthetic practice experience must, within the limits set by the department, demonstrate application of the elements of extensive prosthetic practice, as defined in §114.10(17), to at least two-thirds of the following types of prostheses: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(f) Applicants who meet the requirements of this section but for whom a determination under this section is inconclusive may be required to pass the practitioner exam required under §114.22, to demonstrate unique qualifications for a practitioner license.

§114.25. Temporary License for Practitioners.

(a) A temporary license may be issued under this section to a person who:

(1) has become a Texas resident as defined in §114.10(38), within the twelve (12) month period preceding application for a temporary license;

(2) has applied for a practitioner license; and

(3) has practiced orthotics or prosthetics or both regularly since January 1, 1996 or earlier; or

(4) has been licensed by the state in which the person formerly resided if that state has license requirements that are equal to or exceed the requirements of this chapter.

(b) A temporary license is valid for one year from the date issued unless the applicant is not approved by the department for a practitioner license.

(c) If the practitioner application is not approved by the department, the temporary license is no longer valid and shall be surrendered to the department within fifteen (15) days of the notice of denial.

§114.29. Accreditation of Facilities.

(a) The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic or orthotic facilities meet the department's requirements. This section is adopted under the Act, §605.260. All facilities where orthotics and

prosthetics are provided by persons licensed or registered under this title must be accredited under this chapter, unless the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Accreditation requirement inapplicable to certain facilities. The accreditation requirement of the Act does not apply to a facility licensed under the Health and Safety Code, Title 4, in accordance with §605.260(e) of the Act. These facilities include hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion facilities, continuing care facilities, personal care facilities, special care facilities, maternity homes, and end-stage renal disease facilities.

(c) Requirement for practice setting of licensees.

(1) A person licensed under the Act, Texas Occupations Code, Chapter 605, who practices in Texas shall practice only in facilities accredited under the Act, unless the type of practice is exempted by the Act, §§605.301 - 605.305, or the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(2) A facility shall not be required to achieve accreditation under this section if the facility or person(s) providing health care services at the facility do not perform or hold itself or themselves out as performing or offering to perform prosthetics or orthotics.

(d) Accreditation application. The application shall be completed and submitted to the department on a department-approved form. The application shall be accompanied by the appropriate fee.

(1) A new application for accreditation is required for:

(A) a new facility;

(B) a new location or branch of existing, affiliated facilities;

(C) a new location of an existing facility that is relocating;

(D) a facility adding the prosthetic or orthotic category to an accreditation that is not expired, suspended or revoked;

(E) a facility for which the accreditation has expired or has been terminated; and

(F) an existing facility that has been transferred to new ownership, regardless of prior accreditation status.

(i) A change of ownership of a facility occurs when there is a change in the person(s) legally responsible for the operation of the facility, whether by lease or by ownership.

(ii) The new owner of a prosthetic or orthotic facility must apply for accreditation within ten business days after the change in ownership.

(2) The application for accreditation must include:

(A) a scaled floor plan of the facility indicating the total square feet in the facility and clearly showing the location of parallel bars;

(B) labeled photographs of each room and hallway clearly showing wheelchair accessibility and privacy protections for patients;

(C) labeled photographs of the facility entrance clearly showing wheelchair accessibility; and

(D) labeled photographs of all lab and fabrication areas.

(3) If a person applies for accreditation of more than one facility owned by that person, the department requires one primary application and separate addendum pages for additional sites to be accredited.

(4) If the department does not grant accreditation to the entity that applies to be an accredited facility, the accreditation fee will not be returned.

(5) The department shall give the applicant written notice of the reason(s) for the proposed decision if the facility fails to obtain accreditation.

(e) Personnel requirements for accredited facilities. Accredited facilities shall have the following staff:

(1) Practitioner in charge.

(A) An accredited facility must be under the on-site clinical direction of a practitioner licensed by the department in the discipline(s) for which the facility is accredited. The practitioner in charge shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules.

(B) A person who holds a temporary license or a student registration may not serve as the on-site practitioner in charge.

(C) To change the designation of the on-site practitioner(s) in charge, the facility shall notify the department in writing of the name and license number of the new on-site practitioner(s) and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(2) Residency program director. Facilities providing professional clinical residencies shall have a residency program director to provide direct and indirect supervision of residents. The program director shall be on site as appropriate in accordance with the responsibilities in §114.30. The program director must be a Texas licensed practitioner whose license is in the same discipline in which the professional clinical residency is being conducted.

(3) Safety manager. An accredited facility must designate at least one person as the safety manager.

(A) The safety manager shall develop, carry out, and monitor the safety program for the accredited facility.

(B) To change the designation of the safety manager(s), the facility shall notify the department in writing of the name and license number of the safety manager(s), if any, and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(f) General requirements for accredited facilities.

(1) A facility may not provide services until the department has approved the accreditation.

(2) The facility building and property must meet all applicable federal, state, and local laws, codes, and other requirements.

(3) An accredited facility must display the accreditation certificate in a prominent location in the facility where it is available for inspection by the public.

(4) An accreditation certificate issued by the department is the property of the department and must be surrendered on demand by the department.

(5) A facility accredited under the Act shall prominently display a consumer complaint notice or sign that complies with the requirements of §114.70(d).

(6) An accredited facility may advertise as a "Prosthetic and/or Orthotic Facility Accredited by the Texas Department of Licensing and Regulation." A facility that is exempt or that is not subject to the Act, or that the department does not accredit may not advertise or hold itself out as a facility accredited by the department.

(7) An accreditation issued under this chapter may not be transferred or sold to another facility, location, or owner.

(8) An accredited facility must display the license certificates of its practitioners in a prominent location in the facility where they are available for inspection by the public.

(9) An accredited facility must display a visible sign with its hours of operation, including:

(A) hours of normal business operation, and when appropriate;

(B) information regarding temporary closure, including holidays, or for periods during business hours, including specific dates and times of the closure and emergency contact information.

(g) Failure to achieve accreditation. Facilities that fail to achieve accreditation as required by the Act and the rules are noncompliant with the Act and rules and are subject to disciplinary action.

(h) Facilities failing to renew the accreditation by the expiration date are subject to the late renewal fee schedule applicable to licensees in §60.83 of this title (relating to Late Renewal Fees).

(i) Inspections.

(1) Inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation.

(2) Each accredited facility shall be inspected at least once every two years to verify compliance with the Act and this chapter.

(3) Facilities are subject to random inspection and inspection to investigate complaints.

(4) The department may conduct inspections under the Act and this chapter without advance notice.

(5) Inspections shall be performed during the hours of normal business operation of the facility. The department inspector will contact the facility practitioner in charge or other representative upon arrival at the facility, and before proceeding with the inspection.

(6) The facility practitioner in charge or representative shall cooperate with the inspector in the performance of the inspection.

(j) Facility cleanliness. The facility shall be constructed and maintained appropriately to provide safe and sanitary conditions for the protection of the patients and the personnel providing prosthetic and orthotic care.

(1) Licensees shall wash their hands with hand sanitizer or soap and water before providing service to each patient.

(2) Patient examination and treatment rooms shall be cleaned after each patient.

(3) Hand sanitizer or hand soap and hand towels or hand dryers must be available at the sinks used by employees and patients.

(4) Exam tables shall either be covered in a material that can be disinfected and shall be cleaned and disinfected after providing service to each patient or the facility must use disposable covers that are one-time use and that are replaced after providing service to each patient.

(5) Appropriate gloves and disinfectants for disease control must be available in examination rooms and treatment areas.

(6) Facilities shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(7) Plumbing fixtures, including toilets and wash basins, shall be kept clean. Any disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(8) Facilities shall have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and for potable water supply.

(9) Facilities shall provide access to at least one restroom located on or adjacent to the premises of the facility that complies with applicable current Americans with Disabilities Act or Texas Accessibility standards. Chemical supplies shall not be stored in restrooms or other areas accessible to the public or to patients.

(10) Facilities shall not be utilized for living or sleeping purposes except as applicable to patients, and may not be used for any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public.

(k) Patient waiting area.

(1) Patient waiting areas must be separate from other areas.

(2) Chairs with armrests must be provided in waiting rooms. Chairs without armrests or wheels must be provided upon patient request.

(3) A telephone must be made available for patient use.

(l) Examination/treatment rooms.

(1) Rooms in which patients are seen must maintain privacy and have permanent, floor-to-ceiling walls or dividers and rigid doors that can be closed. Windows must be covered in a way that assures privacy.

(2) At least one set of parallel bars and a mirror that is affixed to the wall or a mirror with a free standing base for patient ambulation trials must be provided in each facility.

(3) Chairs with armrests must be provided in examination/treatment rooms. Chairs without armrests or wheels must be provided upon patient request.

(m) Safety.

(1) Safety equipment, including safety glasses or goggles and dust masks, shall be available to persons working in an accredited facility.

(2) Proper machine use training shall be provided to staff. The facility shall maintain records documenting training, listing the name of the staff person and the date of training for each machine.

(3) Safety guards on machines shall be in place in accordance with the manufacturers' specifications.

(4) Lab/Fabrication areas must be separated from other areas by walls or rigid doors and have adequate lighting.

(5) If smoking is permitted, policies and procedures to control smoking materials shall be clearly posted.

(6) At least one safety manager shall be assigned to the facility. The safety manager shall develop, carry out, and monitor the safety program.

(n) Business office area.

(1) Patient records shall include accurate and current progress notes.

(2) Patient records must be kept private.

(3) Patient records shall not be made available to anyone outside the facility without the patient's signed consent or as required by law.

(4) Records shall be kept for a minimum of five years.

(o) General.

(1) Americans with Disabilities Act compliant restroom and hand washing facilities shall be safe and accessible to the patients.

(2) The facility shall have the equipment, tools, and materials to provide casting, measuring, fitting, repairs and adjustments of orthoses and prostheses, as applicable.

§114.50. Continuing Education.

(a) This section applies to licensees and registrants of the department. This section does not apply to a temporary license or a student registration.

(b) The first continuing education period shall begin after the licensee has renewed his or her license for the first time. Continuing education is not required during the initial license period. Subsequently, a licensee shall attend continuing education activities as a condition of renewal of a license.

(c) Continuing education periods shall be two years in length. The period coincides with the license period.

(d) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit hour.

(2) Course work completed at or through an accredited college or university shall be credited based on eight credits for each semester hour completed for credit. Continuing education credit will be granted for a grade of C or better for the continuing education period in which the course is completed.

(e) Licensees shall attend and complete qualifying continuing education each renewal period unless the licensee is exempt under subsection (l).

(1) Licensees must maintain a record of continuing education credits earned by the licensee and proof of completion of the continuing education credits, which may include certificates, transcripts from certifying agencies or associations, letters from program sponsors concerning the licensee's attendance and participation, or other documentation satisfactory to the department verifying the licensee's attendance or participation.

(2) Attendance and completion of the following number of continuing education credits are required during each renewal period:

(A) prosthetist or orthotist license--24;

(B) prosthetist and orthotist license--40;

(C) prosthetist or orthotist assistant--12;

(D) prosthetist and orthotist assistant--20;

(E) prosthetic or orthotic technician--6;

(F) prosthetic and orthotic technician--10; and

(G) prosthetist with orthotist assistant license or orthotist with prosthetist assistant license--32.

(f) At least 50% of the total hours of continuing education required must be live, instructor-directed activities. Fifty percent or less may be self-directed study.

(g) Continuing education hours must be directly related to prosthetics, orthotics, physical or occupational therapy, orthopedic, podiatric, pedorthic, physical medicine or other subjects approved by the department.

(h) Continuing education credits must be offered or approved by a state, regional or national prosthetic or orthotic, or allied health organization or offered by a regional accredited college or university.

(i) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity in the following categories:

(1) academic courses;

(2) clinical courses;

(3) in-service educational programs, training programs, institutes, seminars, workshops, and conferences; or

(4) self-study modules, with or without audio and video components, if a post-test is required and the number of hours completed do not exceed 50% of the credits required;

(5) distance learning activities, audiovisual teleconferences, and interactive computer generated learning activities provided a documented post-test is completed and passed;

(6) instructing or presenting in activities listed in paragraphs (1) - (3). Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(7) writing a book or article applicable to the practice of prosthetics or orthotics. Four (4) credits for an article and eight (8) credits for a book will be granted for a publication in the continuing education period in which the book or article was published. Multiple publications of the same article or an equivalent article may only be counted once during a continuing education period. Publications may account for 25% or less of the required credit.

(j) Reporting of continuing education credit.

(1) At the time of license renewal, licensees shall file a continuing education report on a department-approved form.

(2) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(3) The audit process shall be as follows:

(A) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(B) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to

the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(C) Failure to timely furnish this information or providing false information during the audit process or the renewal process, are grounds for disciplinary action against the license holder.

(D) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(k) Licenses will not be renewed until continuing education requirements have been met.

(l) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the twenty-four (24) months immediately preceding the license expiration date. The licensee shall submit proof satisfactory to the department:

(1) a licensee who suffered a mental or physical illness or disability that prevented the licensee from complying with the requirements of this section; or

(2) a licensee who suffered a catastrophic event such as a flood, fire, tornado or hurricane that prevented the licensee from complying with the requirements of this section.

(m) Licensees employed as faculty in CAAHEP accredited programs or in programs having educational standards equal to or greater than CAAHEP in prosthetics and orthotics shall be exempt from 50% of the continuing education requirements in this section.

(n) Licensed practitioners who are renewing under retired voluntary charity care status shall be exempt from 50% of the continuing education requirements in this section.

(o) Failure to submit documentation satisfactory to the department as required by subsection (l), shall be considered the same as failing to meet the continuing education requirements of this section.

(p) Untrue documentation or information submitted to the department may subject the licensee to disciplinary action.

(q) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

(1) education incidental to the licensee's regular professional activities such as learning occurring from experience or research;

(2) professional organization activity such as serving on boards, committees or councils or as an officer;

(3) continuing education activities completed before the renewal period; and

(4) performance of duties that are routine job duties or requirements.

§114.90. Professional Standards and Basis for Disciplinary Action.

(a) General. This section is authorized under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, §605.353, and Chapter 51 of the Texas Occupations Code.

(1) If a person or entity violates any provision of Texas Occupations Code, Chapters 51, 605, or any other applicable provision, this chapter, or a rule or order issued by the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 605, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate;

(4) impersonating or acting as a proxy for a licensee or registrant at a continuing education activity;

(5) using a proxy to take an examination or to participate in a continuing education activity;

(6) providing false or misleading information to the department regarding an inquiry by the department; or

(7) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) knowingly employing or professionally associating with a person or entity who is providing prosthetic or orthotic services and is not licensed or accredited as required by the Act or this chapter;

(6) forging, altering, or falsifying a physician's or health care professional's order;

(7) delivering prosthetic or orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Texas Occupations Code, §102.001;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a facility that is required to be accredited and has an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client, patient, or third party;

(12) persistently or flagrantly over treating a client or patient;

(13) violation of the Act, this chapter, or an order issued by the executive director or the commission;

(14) taking without authorization medication, supplies, equipment, or personal items belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c). Other action that may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or that may cause an administrative or civil penalty to be imposed include, but are not limited to:

(1) discriminating based on race, color, national origin, religion, gender, age, or disability in the practice of prosthetics or orthotics;

(2) having surrendered a license to the department or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the department or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the department in rules adopted pursuant to this chapter;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or agreed to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope of the person's license;

(8) failing to supervise and maintain supervision of clinical or technical personnel, licensed or unlicensed, in compliance with the Act and this chapter, or failing to provide on-site supervision for an accredited facility, if designated as the practitioner in charge of the facility;

(9) providing prosthetic or orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or this chapter;

(10) failing to assess and evaluate a patient's status;

(11) providing or attempting to provide services for which the licensee is unprepared through education or experience;

(12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;

(13) revealing confidential information concerning a patient or client except where required or allowed by law;

(14) failing to obtain accreditation for a facility that must be accredited or failing to renew the accreditation of a facility that must be accredited;

(15) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(16) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(17) engaging in sexual contact as defined by the Penal Code, §21.01, with a patient or client as the result of the patient or client relationship;

(18) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(19) submitting false documentation or information to the department relating to continuing education;

(20) failing or refusing to provide acceptable documentation of continuing education reported to the department for renewal if selected for an audit, or if specifically requested by the department;

(21) failing to cooperate with the department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the department or its authorized representative;

(22) interfering with an investigation or disciplinary proceeding by misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(23) fitting a prosthesis or orthosis without prescription;

(24) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician or health care professional;

(25) providing orthotic care in a facility that is not accredited in orthotics that is required to be accredited;

(26) providing prosthetic care in a facility that is not accredited in prosthetics that is required to be accredited;

(27) failing to truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department;

(28) failing to comply with an order issued by the executive director or the commission; and

(29) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others;

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products for which compensation has been received or failing to perform services

or provide products with reasonable care, skill, expedience, and faithfulness;

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Interference with an investigation. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for interference with a department investigation by the misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(g) Surrender of license and formal disciplinary action.

(1) When a licensee or accredited facility has offered the surrender of the license or accreditation after a complaint has been filed, the department shall consider whether to accept the surrender of the license.

(2) Surrender of a license or accreditation without acceptance by the department does not deprive the department of jurisdiction to prosecute an alleged violation of the Act or this chapter.

(3) When the department accepts a surrender while a complaint is pending, that surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the surrender and reflecting this fact.

(4) A license surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

(h) Frivolous complaints. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be imposed for filing a complaint with the department that is frivolous or made in bad faith.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 115. MIDWIVES

16 TAC §§115.1 - 115.7, 115.13 - 115.16, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.80, 115.90, 115.100, 115.111 - 115.123, 115.125

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 115, §§115.2, 115.5 - 115.7, 115.13 - 115.15, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.90, 115.100, 115.111, 115.113 - 115.123 and 115.125, regarding the Midwives program, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 33). The rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 115, §§115.1, 115.3 - 115.5, 115.16, 115.80 and 115.112 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 33). The rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Midwives program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 115 are necessary to implement S.B. 202 and to regulate the Midwives program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 831, regarding the Midwifery program.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Midwives program on October 3, 2016.

Adopted new §115.1 creates the definitions to be used in this chapter.

Adopted new §115.2 determines when a midwives license is required.

Adopted new §115.3 creates the duties of the Midwives Advisory Board.

Adopted new §115.4 establishes the composition of the Midwives Advisory Board.

Adopted new §115.5 establishes the terms and vacancies for Midwives Advisory Board members.

Adopted new §115.6 creates a presiding officer and their role on the Midwives Advisory Board.

Adopted new §115.7 provides guidelines on when advisory board meetings are held.

Adopted new §115.13 details the initial application requirements for those seeking licensure.

Adopted new §115.14 establishes license renewal requirements.

Adopted new §115.15 explains the late renewal of a license process.

Adopted new §115.16 creates the terms for retired midwives who are performing charity work seeking to renew their license.

Adopted new §115.20 details basic midwifery education.

Adopted new §115.21 provides for education course approval.

Adopted new §115.23 establishes the jurisprudence examination.

Adopted new §115.25 specifies continuing education requirements for licensees.

Adopted new §115.70 creates the standards of conduct for midwives.

Adopted new §115.75 determines when a license must be surrendered.

Adopted new §115.80 establishes fees to be used in the midwives program.

Adopted new §115.90 develops a state roster of licensed midwives to be maintained by the Department.

Adopted new §115.100 creates standards for practicing midwifery in Texas.

Adopted new §115.111 details inter-professional care of women within the midwifery model of care.

Adopted new §115.112 explains when a midwife-client relationship may be terminated and the process.

Adopted new §115.113 creates standards for transfer of care in emergency situations.

Adopted new §115.114 details prenatal care.

Adopted new §115.115 establishes the midwives duties in the labor and delivery process.

Adopted new §115.116 provides guidelines for postpartum care.

Adopted new §115.117 details the requirements of newborn care during the first six weeks after birth.

Adopted new §115.118 establishes the process when administration of oxygen may be needed.

Adopted new §115.119 explains eye prophylaxis.

Adopted new §115.120 creates the screening of newborns procedure.

Adopted new §115.121 requires the informed choice and disclosure statement.

Adopted new §115.122 allows the Department to obtain complaint information without the consent of the midwife's client in order to conduct an investigation.

Adopted new §115.123 allows for administrative penalties and sanctions.

Adopted new §115.125 provides the enforcement authority.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 33). The deadline for public comments was February 1, 2016. The Department received comments from three interested persons and the District XI of the American Congress of Obstetricians and Gynecologists (ACOG), the Association of Texas Midwives and the Coalition for Nurses in Advanced Practice (CNAP) on the proposed rules during the 30-day public comment period.

Comment--Several commenters advocated raising initial licensing standards.

Department Response--The advisory board had earlier identified raising the standards to meet the current standards of the North American Registry of Midwives. The board referred this comment and all related comments regarding an increase in initial standards to its appointed workgroup to further study and review the standards and possibly make a recommendation at a later date. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One comment advocated defining the term "renewal period".

Department Response--The advisory board understood the rules made clear the renewal period and no change was necessary. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One comment advocated §115.16(a)(1) and (2) were so similar in language as to be redundant.

Department Response--The Department and advisory board agreed and recommended deleting §115.15(a)(1).

Comment--Several commenters advocate deleting §115.114(b)(9) - (11) to change mandatory referrals for prenatal care from a midwife to a doctor in instances where the patient has had a prior cesarean section (except for prior classical or vertical incision), multiple gestation, and history of prior antepartum or neonatal death. Other comment advocated that this was a life safety standard and should not only be left in the rules for referral but made more restrictive.

Department Response--The advisory board does not advocate any change to the rules from the standards used by the Department of State Health Services. All related comments on the referral and transfer standards are referred to the board appointed work group for consideration. These referral and transfer issues are health and safety issues and as such it is appropriate for them to be further considered by the advisory board in their work group. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter was concerned that requiring 40 contact hours if initial licensure is within four years of completing basic education would unfairly burden out of state midwives seeking licensure in Texas and advocated waiving the standard if a midwife is currently licensed in another state or an active certified professional midwife.

Department Response--The advisory board referred this and related comments to its appointed workgroup for further study and review to make a possible recommendation at a later date. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter recommended mandatory participation in the MANA Statistics Project.

Department Response--This is a voluntary data collection project. Given the requisites of the project for specific data keeping efforts and the lack of statutory basis for requiring participation in any one association's specific data project, the advisory board recommended keeping participation voluntary. Therefore, the Department does not believe any change should be made to the rules based on this comment at this time.

Comment--One commenter recommended §115.117 be amended to removed "large for gestational age" for this should not be reason alone for referral to a doctor.

Department Response--The advisory board does not recommend any change to the rules from the standards used by the Department of State Health Services. All related comments on the referral and transfer standards are referred to the advisory board appointed work group for consideration. These referral and transfer issues are health and safety issues and as such it is appropriate for them to be further considered by the advisory board and their work group. Therefore, the Department does

not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter suggests the language describing the definition of a quorum be changed.

Department Response--The Department believes this is not necessary and the existing language is consistent with language used by the Department for several boards. No change was recommended.

Comment--One commenter advocates that it is incompatible to transfer a patient and have a doctor and midwife collaborate on that patient's care at the same time. The commenter advocates that collaboration should be limited to referral situations only.

Department Response--The advisory board does not advocate any change to the rules from the standards used by the Department of State Health Services. All related comments on the referral and transfer standards are referred to the advisory board appointed work group for consideration. Referral and transfer issues are health and safety issues and as such it is appropriate for them to be further considered by the advisory board in their work group. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter advocates changing rule terminology to "Midwives Advisory Board" to reflect the term used in the statute.

Department Response--The Department agrees to change the terminology to be consistent with statute.

Comment--One commenter states that future advisory board appointment should consider International Confederation of Midwives (ICM) applicants before other board applicants.

Department Response--The Department disagrees. The qualifications for advisory board membership are dictated by statute.

Comment--Comment was received asking that the rules acknowledge that certified nurse midwives may practice midwifery without being licensed under the rules.

Department Response--Certified nurse practitioners practice under the authority of their licenses regulated by the Texas Board of Nursing. No clarification is necessary under the rules for the regulation of midwifery practice to identify that certified nurse midwives are not regulated by these rules.

Comment--Comment was received advocating that §115.20 be changed to reflect the American Midwifery Certification Board (AMCB) from the American College of Nurse-Midwives.

Department Response--The advisory board has assigned this comment to an appointed workgroup for further research and review. The advisory board questioned if further information was needed to make an appropriate determination on this comment. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter identifies that initial licensure requires a basic midwifery course and passage of the NARM exam. Furthermore, NARM does not have a basic midwifery course.

Department Response--The Department believes the commenter misread the rule. The rule does not require passage of a NARM basic midwifery course.

Comment--One commenter states that more than 10 hours should be necessary for a retired midwife to return to practice.

Department Response--The provisions for retired health professionals to provide uncompensated services for charity only, were provided by the 79th legislature to allow such workers to provide services in that very narrow capacity with less regulatory burden. The advisory board referred the comment to an appointed workgroup for review. There is currently only one licensed retired midwife in Texas. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter asks how §115.21 on financial statements differ from the rule under the authority of the Department of State Health Services.

Department Response--The rule does not differ; it mirrors the rule with the Department of State Health Services.

Comment--One commenter advocates that midwives be able to carry medications without a physician's order.

Department Response--The dispensation of prescription drugs is controlled by statute. Therefore, the Department does not recommend making changes to the rules based on this comment.

Comment--One commenter does not make a specific recommendation, but illustrates that a midwife can get "stuck caring for the client for 30 days" should a client refuse referral. They later recommend in a similar comment that §115.112 addressing termination of the midwife client relationship be reduced from 30 days to 7-14.

Department Response--The advisory board was concerned that a patient may be abandoned without appropriate care should the 30 days be reduced. All the relevant comments were recommended to a work group for consideration and review. This issue may be a health and safety issue and as such it is appropriate for them to be further considered by the advisory board in their work group. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

Comment--One commenter lists numerous observations on standards of practice without specific recommendations including: midwifery education does not teach QA and QI such as aims, driver diagrams, pda runs, root cause analysis, cusp. The commenter also notes, but does offer a recommendation on: midwives do not diagnose mental illness; fetal malformation and large and small gestational age is too vague; normal passage of stool may require 48 hours per approved text; and failure to progress during labor is not an emergency. The commenter advocates that a patient should be transferred in instances of non-insulin dependent diabetes, seizure disorder, history of cervical incompetence with surgical therapy, preeclampsia, preterm premature rupture of membranes, insulin dependent diabetes, and cardio vascular disease including hypertension.

Department Response--The advisory board decided to make no recommendations at this time. All standards of care comments were recommended to a standards of care workgroup for consideration and later possible recommendation. The standards of care issues are health and safety issues and as such it is appropriate for them to be further considered by the advisory board in their work group. Therefore, the Department does not believe that any change should be made to the rules based on these comments at this time.

The Midwives Advisory Board was scheduled to meet on November 13, 2015. Although the board lacked a quorum, the members present discussed a draft of the proposed rules with the Department before they were published in the *Texas Register* for public comment.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 9, 2016, advisory board meeting. The Midwives Advisory Board met on February 9, 2016, to review the rule publication and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes discussed in response to public comment. At its meeting on April 13, 2016, the Commission adopted the proposed rules with changes as recommended by the Board.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the adoption.

§115.1. Definitions.

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

(1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.

(2) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses--The basic midwifery education courses approved by the department.

(4) Advisory Board--The Midwives Advisory Board appointed by the presiding officer of the Commission with the approval of the Commission.

(5) Code--Texas Health and Safety Code.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Department--The Texas Department of Licensing and Regulation.

(8) Executive director--The executive director of the department.

(9) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(10) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(11) Newborn care--The care of a child for the first six weeks of the child's life.

(12) Normal childbirth--The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(13) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board.

(14) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.

(15) Program--The department's midwifery program.

(16) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(17) Retired midwife--A midwife licensed in Texas who is over the age of 55 and not currently employed in a health care field.

(18) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board in Chapter 193 (relating to Standing Delegation Orders) and §115.111 of this title (relating to Inter-professional Care).

(19) Voluntary charity care--Midwifery care provided without compensation and with no expectation of compensation.

§115.3. Midwives Advisory Board Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter, including scope of practice and health related standards of care.

§115.4. Advisory Board Membership.

The Midwives Advisory Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) five members each of whom has at least three years' experience in the practice of midwifery;

(2) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife;

(3) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists; and

(4) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians.

§115.5. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expiring on January 31st of each odd-numbered year.

(b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§115.16. Renewal for Retired Midwives Performing Charity Work.

(a) A retired midwife who is only providing voluntary charity care:

(1) may renew his or her midwifery license by submitting all the items required for renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(2) may renew his or her midwifery license late by submitting all the items required for late renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(b) A retired midwife who has previously renewed under this subsection, and then subsequently seeks to return to employment in the active practice of midwifery in Texas, must either:

(1) be currently licensed under this subsection but not due for renewal, and submit the following items to the department:

(A) ten hours of continuing education, taken in the 12 months preceding the application;

(B) the retired midwife reinstatement fee; and

(C) a written request to return his or her license to active status; or

(2) be currently licensed under this subsection and when billed for renewal, submit all the items required for renewal with a written request to return his or her license to active status; and

(3) receive approval from the department prior to returning to active practice.

§115.80. Fees.

All fees must be made payable to the department and are nonrefundable.

(1) Application fee--$275

(2) Renewal fee--$550 for each two-year renewal period

(3) Duplicate license fee--$20

(4) Retired midwife renewal fee--$275

(5) Retired midwife reinstatement fee--$275

(6) Jurisprudence examination fee--$35

(7) Education course initial application fee--$150

(8) Education course site visit fee--$500

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) Dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) the client has no need of further care;

(B) the client terminates the relationship; or

(C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;

(C) providing referrals; and

(D) documenting the termination of care in midwifery records.

(3) Termination of Care during Labor. If the midwife deems that midwifery care is no longer within her scope and the client is non-compliant, the midwife may:

(A) recommend transport;

(B) call 911 and allow client to refuse EMS care; and

(C) have a sign and dated written document that describes the reason for the termination and the signatures of both the midwife and the client.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

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CHAPTER 116. DIETITIANS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 116, Subchapter A, §116.1 and §116.2; Subchapter B, §§116.10 - 116.14; Subchapter C, §116.20 and §116.21; Subchapter D, §116.30; Subchapter E, §§116.40 - 116.44; Subchapter F, §§116.50 - 116.53; Subchapter G, §§116.60 - 116.65; Subchapter H, §116.70; Subchapter I, §§116.80 - 116.83; Subchapter J, §116.90 and §116.91; Subchapter K, §§116.100, 116.101, and 116.103 - 116.105; Subchapter L, §116.110; Subchapter M, §116.120; Subchapter N, §§116.130 - 116.132; and Subchapter O, §§116.140 - 116.142, regarding the Dietitians program, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 44). The rules will not be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Dietitians program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 116 are necessary to implement S.B. 202 and to regulate the Dietitians program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 711, regarding the Dietitians program.

The rule sections are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Dietitians program on October 3, 2016.

Adopted new Subchapter A provides the General Provisions for the adopted new rules.

Adopted new §116.1 provides the statutory authority for the Commission and Department to regulate dietitians.

Adopted new §116.2 creates the definitions to be used in the dietitians program.

Adopted new Subchapter B creates the Dietitians Advisory Board.

Adopted new §116.10 provides the composition and membership requirements of the advisory board.

Adopted new §116.11 details the duties of the advisory board.

Adopted new §116.12 sets the terms and vacancies process for advisory board members.

Adopted new §116.13 provides for a presiding officer of the advisory board.

Adopted new §116.14 provides details regarding advisory board meetings.

Adopted new Subchapter C establishes the education requirements for the dietitians profession.

Adopted new §116.20 details the degrees and coursework needed to apply for licensure.

Adopted new §116.21 details the transcripts the Department will accept from those seeking licensure.

Adopted new Subchapter D establishes the experience requirements needed for the dietitians profession.

Adopted new §116.30 explains the requirements for preplanned professional experience programs and internships.

Adopted new Subchapter E establishes the examination requirements.

Adopted new §116.40 provides general provisions regarding license examinations.

Adopted new §116.41 creates license examination qualifications for those seeking licensure.

Adopted new §116.42 details the license examination process.

Adopted new §116.43 explains the process for examination failures.

Adopted new §116.44 details the requirements for the Texas Jurisprudence Examination.

Adopted new Subchapter F establishes the licensing and renewal requirements for licensed dietitians.

Adopted new §116.50 details the application and eligibility requirements for licensed dietitians.

Adopted new §116.51 provides the fitness requirements for licensed dietitian applicants.

Adopted new §116.52 explains the process of issuing licenses and identification cards for licensed dietitians.

Adopted new §116.53 details the license terms and the renewal requirements for licensed dietitians.

Adopted new Subchapter G establishes the licensing and renewal requirements for provisional licensed dietitians.

Adopted new §116.60 details the application and eligibility requirements for provisional licensed dietitians.

Adopted new §116.61 provides the fitness requirements for provisional licensed dietitian applicants.

Adopted new §116.62 explains the process of issuing licenses and identification cards for provisional licensed dietitians.

Adopted new §116.63 details the license terms and the renewal requirements for provisional licensed dietitians.

Adopted new §116.64 explains the process for a provisional licensed dietitian to upgrade to a licensed dietitian.

Adopted new §116.65 establishes supervision requirements for provisional licensed dietitians.

Adopted new Subchapter H establishes the licensing requirements for temporary licensed dietitians.

Adopted new §116.70 details the application and eligibility requirements for temporary licensed dietitians and explains the license term.

Adopted new Subchapter I establishes the continuing education requirements for the dietitians profession.

Adopted new §116.80 establishes the general requirements and hours of continuing education needed for license holders.

Adopted new §116.81 outlines the criteria for continuing education approved courses and credits.

Adopted new §116.82 explains the continuing education auditing process and the records that must be kept.

Adopted new §116.83 explains what happens when a license holder fails to complete the required continuing education.

Adopted new Subchapter J establishes the responsibilities of the Commission and Department.

Adopted new §116.90 provides that the Department will publish and maintain a registry of license holders.

Adopted new §116.91 requires the Commission to adopt rules necessary to implement the Dietitians program, including rules governing changes to the standards of practice rules.

Adopted new Subchapter K establishes the responsibilities of the licensee and the code of ethics.

Adopted new §116.100 requires all licensees to display the license certificate in a public manner.

Adopted new §116.101 requires all licensees to notify the Department of a name or address change.

Adopted new §116.103 details the information that all licensees must provide to clients and the public.

The proposed new §116.104 prohibits licensees from using unlawful, false, misleading or deceptive advertising and provides a list of such advertising.

Adopted new §116.105 creates a code of ethics for licensees.

Adopted new Subchapter L establishes fees for the Dietitians program.

Adopted new §116.110 details all fees associated with the Dietitians program as regulated by the Commission and the Department.

Adopted new Subchapter M establishes a subchapter to address complaints.

Adopted new §116.120 provides that the Commission will adopt rules regarding complaints involving standard of care.

Adopted new Subchapter N establishes enforcement provisions.

Adopted new §116.130 allows for administrative penalties and sanctions.

Adopted new §116.131 provides the authority to enforce Texas Occupations Code, Chapter 701 and this chapter.

Adopted new §116.132 requires a licensee to surrender his or her license to the Department on demand.

Adopted new Subchapter O includes specific information regarding the dietetic profession.

Adopted new §116.140 establishes the areas of expertise for the dietetic profession.

Adopted new §116.141 explains the scope of practice of a licensed dietitian to provide nutrition services in a licensed health facility and in a private practice setting.

Adopted new §116.142 explains the scope of practice and establishes continuing education requirements for a licensed dietitian who provides diabetes self-management training to clients.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 44). The deadline for public comments was February 1, 2016. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period.

Comment--The first comment stated that the commenter had reviewed the Department proposed rules, but wanted to know if there are any major changes from what was previously included.

Department Response--It is not clear whether the commenter is comparing the Department proposed rules to the current rules of the Texas State Board of Examiners of Dietitians (DSHS Board), the proposed DSHS Board rules, or the Department draft proposed rules that were discussed at the November 12, 2015, advisory board meeting.

The Department tried not to make many substantive changes to the current DSHS Board rules to assist in a smooth transition of the Dietitians program from DSHS to the Department. However, the Department is not in a position to judge whether a specific change, or the changes as a whole, would be considered "major" to the commenter. The preamble of the Department proposed rules contains a summary of each subchapter and section contained in the Department proposed rules. The preamble and the proposed rules are available on the Department's website. In addition, the video of the November 12, 2015, advisory board meeting is also available on the Department's website to review. The summary and the video may assist the commenter in reviewing the Department proposed rules as published in the *Texas Register* and making an assessment regarding the proposed changes. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The second commenter stated that the Texas State Board of Examiners of Dietitians (DSHS Board) had proposed rules that it had planned on adopting. The commenter asked whether the DSHS Board still needed to complete the process and whether the DSHS Board proposed rules were incorporated into the Department proposed rules. The commenter did not know if the Department had received the DSHS Board proposed rules.

Department Response--Regarding the process involving the DSHS Board proposed rules, the Department cannot provide advice regarding the DSHS Board's activities.

The Department did receive a copy of the DSHS Board proposed rules that repealed certain rule provisions, including 22 TAC §711.6 and 22 TAC §§711.7(c) - (g), and that were published in the *Texas Register* on October 30, 2015 (40 TexReg 7558). The Department reviewed the DSHS Board proposed rules but did not include most of the proposed changes in the Department proposed rules due to the statutory requirements as they relate to: (1) preplanned professional experience programs and internships under Texas Occupations Code §701.254(2); and (2) license examinations, qualifications, investigations, and reexaminations under Texas Occupations Code §§701.253, 701.254, 701.255, and 701.257. The Department did not make any changes to the proposed rules in response to this comment.

The Dietitians Advisory Board was scheduled to meet on November 12, 2015. Although the board lacked a quorum, the members present discussed a draft of the proposed rules with the Department before they were published in the *Texas Register* for public comment.

The Department staff met with DSHS staff to seek their technical expertise prior to the February 19, 2016, advisory board meeting. The Dietitians Advisory Board (Advisory Board) met on February 19, 2016, to discuss the proposed rules with Department staff and staff of DSHS and to review the rule publication and the public comments received. As part of the Advisory Board discussions, the Department recommended a technical correction to the proposed rules. The Advisory Board voted and unanimously recommended that the Commission adopt the proposed rules as published in the *Texas Register* with the technical correction. The technical correction was subsequently determined not to be necessary, since the Texas Register staff identified and already made the technical correction prior to publication of the proposed rules. At its meeting on April 13, 2016, the Commission adopted the proposed rules without changes.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §116.1, §116.2

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

TRD-201602758
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 1, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 463-8179

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SUBCHAPTER B. DIETITIANS ADVISORY BOARD

16 TAC §§116.10 - 116.14

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EDUCATION REQUIREMENTS

16 TAC §116.20, §116.21

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. EXPERIENCE REQUIREMENTS

16 TAC §116.30

The new rule is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EXAMINATION REQUIREMENTS

16 TAC §§116.40 - 116.44

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. LICENSED DIETITIANS

16 TAC §§116.50 - 116.53

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. PROVISIONAL LICENSED DIETITIANS

16 TAC §§116.60 - 116.65

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. TEMPORARY LICENSED DIETITIANS

16 TAC §116.70

The new rule is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. CONTINUING EDUCATION

16 TAC §§116.80 - 116.83

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §116.90, §116.91

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§116.100, 116.101, 116.103 - 116.105

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. FEES

16 TAC §116.110

The new rule is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. COMPLAINTS

16 TAC §116.120

The new rule is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §§116.130 - 116.132

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201602771
William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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Proposal publication date: January 1, 2016
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SUBCHAPTER O. THE DIETETIC PROFESSION

16 TAC §§116.140 - 116.142

The new rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201602772
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 1, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 463-8179

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.5, concerning Terms Defined Herein, repeal of §1.191, concerning Description of Experience Required for Registration by Examination, and repeal of §1.192, concerning Additional Criteria, without changes to the proposed text published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2570).

Reasoned Justification. Under §1.21 and §1.22, the Board requires applicants for architectural registration by examination and reciprocity to complete the Intern Development Program (IDP), which is administered by the National Council of Architectural Registration Boards (NCARB). IDP is a standardized program that is accepted by Texas and most other jurisdictions to demonstrate sufficient experience to be registered as an architect. Recently, NCARB announced an overhaul of the IDP program, scheduled to take effect in June of 2016, that will consolidate the seventeen current IDP "experience areas" into six broad practice-based experience areas. Because the Board previously adopted the NCARB IDP requirements into rule, it was necessary for the Board to amend its rules in order to maintain consistency with the NCARB IDP program.

The IDP requirements were previously contained in §1.191 and §1.192. Rather than replace the previously adopted rules with the new IDP requirements, the Board is repealing these rules, relying instead on references within §1.21 and §1.22 that applicants for registration must complete the intern development program, which is further defined in §1.5(36) as the internship program established, interpreted, and enforced by NCARB. By relying upon reference to the NCARB program, the Board eliminates needless repetition in the rules, and decreases the possibility of confusion from applicants on whether the Board's requirements differ from those of NCARB.

Additionally, the Board deletes §1.5(37), which contains a definition for "intern development training requirement," which is a redundant term that is made obsolete by the deletion of §1.191 and §1.192.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rules.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

Statutory Authority. The amended rule is adopted under §§1051.202, 1051.705(a)(2), and 1051.305 of the Texas Occupations Code.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705(a)(2) authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

Texas Occupations Code §1051.305 authorizes the Board to consider registration by reciprocity for applicants who hold a license or certificate of registration from another jurisdiction with registration requirements that are substantially equivalent to Texas requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 1, 2016.

TRD-201602742
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: June 21, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.191, §1.192

Statutory Authority. The repealed rules are adopted under §§1051.202, 1051.705(a)(2), and 1051.305 of the Texas Occupations Code.

Texas Occupations Code §1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Texas Occupations Code §1051.705(a)(2) authorizes the Board to prescribe satisfactory architectural experience to sit for the registration examination.

Texas Occupations Code §1051.305 authorizes the Board to consider registration by reciprocity for applicants who hold a license or certificate of registration from another jurisdiction with registration requirements that are substantially equivalent to Texas requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 1, 2016.

TRD-201602743
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: June 21, 2016
Proposal publication date: April 8, 2016
For further information, please call: (512) 305-8519

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER B. HEALTHCARE SAFETY ADVISORY COMMITTEE

25 TAC §200.40

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts new §200.40, concerning the Healthcare Safety Advisory Committee. New §200.40 is adopted without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2582) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

Senate Bill (SB) 200 and SB 277, 84th Legislature, Regular Session, 2015, directed the Executive Commissioner of the HHSC to establish and maintain advisory committees to address major health and human services issues and to adopt rules to govern the advisory committee's purpose, tasks, reporting requirements, and date of abolition. As part of health and human services (HHS) system-wide inventory and analysis, the Healthcare Safety Advisory Committee (formerly known as the Health Care-associated Infections and Preventable Adverse Events (HAI/PAE) Advisory Panel) has been identified for rulemaking.

SB 277 amended the Health and Safety Code, Chapter 98, Reporting of Health Care-associated Infections (HAI) and Preventable Adverse Events (PAE), by removing the HAI/PAE Advisory Panel from the statute. The advisory panel serves a critical role to obtain stakeholder feedback on programmatic activities and initiatives. Most recently, the panel has participated in guidance document creation contributing to the clarity of reporting for PAEs which kept the initiative on schedule for implementation. The new rule describes the operations of the Healthcare Safety Advisory Committee including the purpose, tasks, reporting requirements, membership composition, and meeting schedules. This panel has been in existence with regular meetings since 2005.

SECTION-BY-SECTION SUMMARY

New §200.40 establishes the Healthcare Safety Advisory Committee. The new rule (1) identifies the statutory authority of the panel; (2) outlines the committee's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) gives date of abolition; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

This new rule is authorized by the Government Code, §531.012, which requires the department to adopt rules necessary to establish the Advisory Committee, and by Chapter 2110 in general; and Government Code, §531.0055(e), and the 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER O. TEXAS COMMERCIAL LINES STATISTICAL PLAN

28 TAC §5.9501

The Texas Department of Insurance adopts amendments to 28 TAC §5.9501, concerning the Texas Commercial Lines Statistical Plan (Plan). The adopted section incorporates by reference a revised Plan, effective July 1, 2017. The amendments to §5.9501 are adopted with changes to the proposed text published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2305), and the Plan is adopted by reference with changes to the proposed version posted on the department's website with the proposal. The department changed §5.9501(a)(4) and (b) as proposed to provide a later date for insurers to begin mandatory reporting under the revised Plan. In the Plan, the department corrected contact information and added a reference to new reporting codes to the note at the top of page F-33.

REASONED JUSTIFICATION. The revised Plan adopted by reference in the amended section incorporates the same requirements and instructions for the reporting of direct commercial lines insurance premium and loss data to the designated statistical agent as the existing Plan, with the exception of new class codes and two new indicators for insurers that write surety bonds, and updated contact information for the department and the statistical agent.

The department adopts changes to the Plan to require surety insurers to report a small business indicator and an expedited underwriting indicator, and to add new class codes identifying public-private partnerships. The adopted changes to surety risk reporting are for the purpose of standardizing the manner in which those insurers report premium and loss experience. When the Plan was last updated, effective January 1, 2010, the department revised the fields and codes used for reporting premium and loss experience for surety and fidelity risks to be consistent with the standard fields and codes required in the statistical plan used in all other states. In 2015, that statistical plan added new class codes and indicators. The adopted updates to the Plan are necessary to keep its reporting requirements in line with those in the statistical plan used in all other states, which will ease reporting for insurers who write in multiple states; potentially lower compliance costs; and allow for better experience comparison by the department, the designated statistical agent, and the industry in general. Under the amendments to §5.9501, insurers are required to begin reporting under the revised Plan by July 1, 2017. Insurers may voluntarily begin reporting under the revised Plan beginning July 1, 2016.

The department also adopts changes to the Plan to update contact information for the department and the designated statistical agent. The changes are necessary to avoid confusion and to facilitate communication among insurers, the department, and the designated statistical agent by ensuring that insurers have accurate and current contact information. Insurers should begin using the updated contact information to communicate with the department and the designated statistical agent immediately, if they are not already doing so.

Adopted amendments to §5.9501(b) adopt by reference the revised Plan. Adopted amendments to §5.9501(a)(4) provide that insurers must use the revised version of the Plan beginning July 1, 2017. These amendments are necessary to implement the revised Plan and set the effective date by which insurers must report under the revised Plan.

Nonsubstantive changes to §5.9501 are also necessary to correct grammar errors and conform the adoption to the department's writing guidelines, and other nonsubstantive changes to the Plan are necessary to make corrections to page cross-references.

The department adopts the rule with a change to the effective date of the Plan and the date insurers must begin reporting under the revised Plan, both July 1, 2017, in order to give insurers a full year from the date of adoption to make any adjustments needed to comply with the new requirements.

In response to a comment on the proposal, the department adopts by reference a revised Plan that includes changes from the proposed Plan and rules that were posted on the department's website. The changes reflect an accurate email address for general reporting questions and the web address of the Texas Operating Procedures Manual provided by the statistical agent. In addition, a conforming change to Page F-33 adds the new reporting codes for public-private partnerships to the note at the top of the page. The changes are in line with the stated goals of providing accurate contact information for use by reporting insurers, and they align the Plan's reporting requirements with those in the statistical plan used in all other states. They do not introduce new subject matter or affect insurers other than those previously on notice from the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department received three written comments. A hearing was not requested. Commenters for the proposal were: International Fidelity Insurance Company Surety Group and Zurich American Insurance Company. Commenter in support of the proposal, with changes, was: ISO Solutions.

Comment: Two commenters supported the department's proposal to amend the Plan because it facilitates the delivery of information to the department and increases efficiency by allowing insurers to prepare one survey for all states.

Agency Response: The department appreciates the comments.

Comment: A commenter suggested corrections to the email address given in the Plan for general reporting questions and the website address of the Texas Operating Procedures Manual provided by the statistical agent. The commenter also suggested adding a reference to the new classification codes in the note at the top of Page F-33 of the Plan.

Agency Response: The department agrees with the suggestions and makes the changes to the revised Plan, which is adopted by reference in the adopted rule.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.202, 38.204(a), 38.205, 38.207, and 36.001.

Section 38.202 allows the commissioner to, for a line or subline of insurance, designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes.

Section 38.204(a) provides that a designated statistical agent must collect data from reporting insurers under a statistical plan adopted by the commissioner.

Section 38.205 requires insurers to provide all premium and loss cost data to the commissioner or the designated statistical agent as the commissioner or agent requires.

Section 38.207 authorizes the commissioner to adopt rules necessary to accomplish the purposes of Chapter 38, Subchapter E, relating to statistical data collection.

Section 36.001 provides the commissioner's general rulemaking authority to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of the state.

§5.9501. Texas Commercial Lines Statistical Plan.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish requirements for the reporting of premium and loss data by direct commercial lines insurers under Insurance Code Chapter 38, Subchapter E.

(2) Under Insurance Code §38.202, the commissioner has designated a statistical agent for commercial lines of insurance.

(3) As provided by Insurance Code §38.205, all insurers writing direct commercial lines business in Texas are required to provide a report of their premium and loss cost experience to the commissioner or the statistical agent designated under Insurance Code §38.202. The report must comply with the reporting requirements and instructions specified in the Texas Commercial Lines Statistical Plan adopted by reference in subsection (b) of this section.

(4) This section applies to all reports required to be filed with the department under this section for reporting periods beginning on or after July 1, 2017.

(b) Adoption by Reference. The commissioner adopts by reference the Texas Commercial Lines Statistical Plan, effective July 1, 2017. This document is published by the department and is available on the department's website at www.tdi.texas.gov.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Norma Garcia
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Texas Department of Insurance
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Proposal publication date: March 25, 2016
For further information, please call: (512) 676-6584

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) adopts amendments to §15.36 (relating to Certification Status of City of Galveston Dune Protection and Beach Access Plan) without changes to the proposed text as published in April 15, 2016, issue of the *Texas Register* (41 TexReg 2671). Section 15.36 will not be republished.

BACKGROUND AND JUSTIFICATION

The City of Galveston's (City's) Beach Access Plan (Plan) was first adopted on August 12, 1993, and was more recently amended to adopt the City's Erosion Response Plan, which was certified by the GLO as consistent with state law and became effective on December 2, 2012. The City Council amended Section 29-90 of the City Code related to Beach Access, Dune Protection and Beachfront Construction to increase the City's Beach User Fee (BUF) on January 15, 2016. The City submitted the amended Plan to the GLO with a request for certification pursuant to Texas Natural Resources Code §61.015(b).

The amendment to the City's Plan modifies Section 29-90(o)(7)(f) to increase the BUF for daily fees from $8.00 to up to a maximum of $15.00 per vehicle, and season passes from $25 to up to a maximum of $50 per vehicle at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Parks #1-3.

The City provides that the BUF increase is necessary due to the continuous rise of expenses to meet the demand for new and/or improved beach-related services in the parks and to offset the withdrawal of funding from reserves to provide beach-related services, including beach nourishment projects. The City identifies that the BUF increase will help provide for multiple beach nourishment projects and other beach related services through coordination with the Galveston Island Park Board of Trustees (Park Board).

The City identifies public park enhancement projects in the Park Board Beach Parks Master Plan (Master Plan). In the short term, the revenue generated by the increased BUF will be used to: expand restrooms, changing and rinse-off facilities at the public parks; improve overall accessibility and use of the parks for disabled persons; provide for additional beach access signage; and provide for general parking improvements.

In the long term, the City identifies that increased BUF revenues will be used to: ensure concessions are available on the beach; construct new pavilions and visitor centers; expand camping and RV facilities; and expand and enhance public parking in the parks through land acquisitions and constructing additional parking structures. Supporting documentation (Staff Report 16PA-001) identifies that the City and Park Board will use the fee revenues to maintain three (3) large scale beach nourishment projects at Dellanera Park, the Galveston Seawall from 12th to 61st streets, and a cooperative project with the U.S. Army Corps of Engineers to nourish beaches west of 61st street in front of the Galveston Seawall.

The GLO has reviewed the City's BUF Plan and has determined that the BUF is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services; does not unfairly limit public use of and access to and from public beaches in any manner; and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the changes to the Plan are consistent with state law.

The GLO published the proposed amendments in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2671) for a thirty

(30) day public comment period which ended on May 16, 2016. The GLO received no public comments on the amendments.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments are subject to the Coastal Management Program as provided for in the Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and (c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The amendments that modify the City's BUF Plan are consistent with 31 TAC §501.12(4) and (5). The amendments are consistent with the CMP goals in 31 TAC §501.12(4) because they ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. The amendments are also consistent with 31 TAC §501.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The amendments are also consistent with CMP policies in §501.26(a)(4) (relating to Policies for Construction in the Beach/Dune System) by enhancing and preserving the ability of the public, individually and collectively, to exercise its rights of use and access to and from public beaches.

No comments were received from the public regarding the consistency determination. The GLO has determined that the adopted rule amendments are consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which requires the GLO to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, and 61.022 are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) Chapter 356, relating to Groundwater Management, §356.10, relating to Definitions; §356.21, relating to Designation of Groundwater Management Areas; §356.22, relating to Request to Amend Groundwater Management Area Boundaries; §356.34, relating to District Adoption of the Desired Future Conditions; §356.35, relating to Modeled Available Groundwater; and §356.53, relating to Plan Submission. The TWDB also adopts new §356.41, relating to Petition: Required Administrative Review and Scientific and Technical Study, and new §356.42, regarding Petition: Mediation of Issues. The amendments and new rules are adopted with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 937).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB proposed these changes in order to clarify procedures related to amending the boundaries of groundwater management areas and to conform to changes in statute due to passage of House Bill (HB) 200 in 2015 by the 84th Texas Legislature.

Amending Boundaries of Groundwater Management Areas

In accordance with 31 TAC §356.22(b)(2), authorization is required from the TWDB to proceed with rulemaking for a boundary change involving a substantive change to the physical groundwater management area boundary. Originally, TWDB maintained the groundwater management area boundary designations in certain internal data files. The titles of these data files were included in TWDB rules relating to groundwater management area designations. Because of this, the TWDB was required to authorize a rulemaking every time it amended groundwater management area boundaries. However, the titles of the data files are no longer listed in TWDB rules. Therefore, the requirement for a rulemaking to reflect a substantive change to groundwater management area boundaries has been deleted.

The adopted amendment to 31 TAC §356.22(b)(2) reflects the changes in TWDB practice for amending groundwater management area boundaries by removing the required rulemaking. Each groundwater management area requesting a change to its boundaries must continue to hold a public meeting on the issue and submit the notice and minutes of that meeting to TWDB with its request. Furthermore, the adopted amendment to 31 TAC §356.22(b)(2) would still require TWDB approval at a public board meeting for substantive changes. Therefore, a thorough notice and comment process will still be involved for amending groundwater management area boundaries even if the process no longer includes a rulemaking by TWDB.

Changes to Process to Consider Desired Future Conditions Petitions

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedure for the appeal of a desired future condition adopted by a groundwater conservation district (District). The adopted amendments reflect the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge. An affected person has to file a petition with the District within 120 days of the District's adoption of the desired future condition. Within 60 days of

receiving a petition, a District is required to contract with SOAH to conduct the contested case hearing and submit any related petitions. Within 10 days of receiving the petition, the District is to submit a copy of the petition to the TWDB so it can conduct an administrative review of the desired future condition and a scientific and technical analysis. TWDB has 120 days to deliver the scientific and technical analysis to SOAH. TWDB staff responsible for the scientific and technical analysis may be called to testify as expert witnesses.

A District can also seek the assistance of the TWDB to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS

§356.10. Definitions.

The definition of "Affected Person" is added to define the term as used in 31 TAC Chapter 356 to implement HB 200.

The definition of "Evidence" is deleted because it is unnecessary and is no longer applicable.

The definition of "Office" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Person with a legally defined interest in groundwater" is deleted because it is unnecessary and is no longer applicable.

The definition of "Petition" is revised for consistency with Chapter 36 of the Texas Water Code.

The definition of "Petitioner" has been deleted because it is unnecessary and is no longer applicable.

The definition of "Relevant aquifer" has been moved within this Definitions section and renumbered.

Definitions have been renumbered accordingly.

§356.21. Designation of Groundwater Management Areas.

Section 356.21 is revised for consistency with current agency practice related to data and map files.

§356.22. Request to Amend Groundwater Management Area Boundaries.

Section 356.22 has been revised for consistency with current agency practice related to amending groundwater management area boundaries.

§356.34. District Adoption of the Desired Future Condition.

Section 356.34 has been revised for consistency with agency practice and rules related to the submission of a desired future condition package.

§356.35. Modeled Available Groundwater.

Section 356.35 has been revised to require the TWDB to provide the modeled available groundwater value no later than 180 days after the executive administrator has provided notice that the desired future condition package submitted is administratively complete.

§356.41. Petition: Required Administrative Review and Scientific and Technical Study.

Section 356.41 (relating to Petition: Required Administrative Review and Scientific and Technical Study) has been repealed and new §356.41 has been adopted. Section 356.41 details the procedures for the appeal of a desired future condition adopted by a groundwater conservation district, consistent with Chapter 36 of the Texas Water Code, as amended by HB 200, 84th Legislative Session. This amendment reflects the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a groundwater conservation district to contract with the SOAH to hear the challenge. The adopted rule requires the TWDB to conduct an administrative review of the desired future condition and a scientific and technical analysis.

§356.42. Petition: Mediation of Issues.

Section 356.42 (relating to Hearing) has been repealed and a new §356.42 has been adopted. It allows a groundwater conservation district to request the TWDB's assistance in mediating the issues raised in the petition, consistent with Chapter 36 of the Texas Water Code, as amended by HB 200, 84th Legislative Session. If the issues cannot be resolved, SOAH is to proceed with the hearing.

§356.53. Plan Submission.

Section 356.53 is revised to correct a term.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted 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 Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not 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; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The adopted rulemaking would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas

Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25 percent or more beyond that which would otherwise exist in the absence of the regulation. In other words, this adopted rulemaking provides clarity regarding the TWDB's process for changing groundwater management area boundaries and more closely aligns the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

Written comments were received from Prairielands Groundwater Conservation District, Upper Trinity Groundwater Conservation District, and Xcel Energy.

RESPONSE TO COMMENTS

Comment

The Prairielands Groundwater Conservation District and the Upper Trinity Groundwater Conservation District (collectively referred to as "the Districts") expressed their appreciation to the TWDB for presenting a complete and thoughtful rule package that effectively clarifies the procedures related to amending the boundaries of groundwater management areas, and represents the new petition process to appeal the adoption of desired future conditions. However, the Districts did recommend the following changes: (1) Section 356.41(a) should be revised to reflect that the desired future conditions are truly established by the district representatives of the groundwater management area during the joint planning process, which each individual district must later adopt; and (2) Section 356.42(c) should be stricken because the Districts feel that the ability of the Executive Administrator of the TWDB to unilaterally contract with an independent mediator at the district's expense exceeds the statutory language in HB 200 and the intent of the legislature. The Districts contend that HB 200, as codified in Section 36.1083 of the Texas Water Code, does not require the district to pay the cost of the mediation.

Response

The TWDB appreciates these comments from the Districts and agrees to clarify the rules to address the comments.

With respect to comments on proposed Section 356.41(a), the rule has been revised to clarify that the TWDB will perform an administrative review of a petition that is filed appealing a desired future condition adopted by an individual district under Texas Water Code §36.108(d-4).

With respect to comments on proposed Section 356.42(c), we have deleted the language concerning expenses for mediation. The new language gives the Executive Administrator flexibility in mediating issues using agency staff or an independent mediator.

Comment

Xcel Energy stated that they would like the definition of "Affected Person" in Section 356.10 to include persons and entities because an entity could also have an interest in groundwater rights. They suggested a way to accomplish this would be to either add "or entity" after the term "person" in the definition of "Affected Person," or use the word "owner" throughout the definition.

Response

The TWDB agrees that an entity could also have an interest in groundwater rights. Accordingly, the rule has been revised to add "or entity" where appropriate.

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

STATUTORY AUTHORITY

The amendment is adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Chapter 36, concerning the procedures for the appeal of a desired future condition adopted by a groundwater conservation district.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

§356.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

(1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person or entity who holds or is applying for a permit from a district in the management area, a person or entity who has groundwater rights in the management area, or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.

(2) Agency--The Texas Water Development Board.

(3) Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.

(4) Board--The governing body of the Texas Water Development Board.

(5) Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(6) Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(7) Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(8) District--Any district or authority subject to Chapter 36, Texas Water Code.

(9) Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(10) Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.

(11) Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.

(12) Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.

(13) Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(14) Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(15) Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(16) Office--State Office of Administrative Hearings.

(17) Petition--A document submitted to the groundwater conservation district by an affected person appealing the reasonableness of a desired future condition.

(18) Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(19) Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(20) Relevant aquifer--An aquifer designated as a major or minor aquifer.

(21) State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(22) Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(23) Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman
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For further information, please call: (512) 463-7686

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SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.21, §356.22

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also proposed under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

§356.21. Designation of Groundwater Management Areas.
The boundaries of the groundwater management areas are delineated using a geographic information system maintained and updated by the executive administrator. The digital files and a graphic representation of the groundwater management area boundaries are available on the agency's web site at *http://www.twdb.texas.gov.* The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. These files are controlling in the event of a conflict with any graphic representation.

§356.22. Request to Amend Groundwater Management Area Boundaries.

(a) A request to amend the boundaries of a groundwater management area must be addressed to the executive administrator and must contain the following:

(1) a resolution supporting the change signed by each of the district representatives in each affected groundwater management area;

(2) a demonstration that the geographic and hydrogeologic conditions require the proposed boundary change or an explanation that the change involves only an administrative correction; and

(3) a copy of the notice and minutes of the public meeting held by the districts in each affected groundwater management area at which the districts approved the resolution in paragraph (1) of this subsection.

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization.

(c) The executive administrator may, in his discretion, make administrative corrections to the data files described in §356.21 of this subchapter. The executive administrator will notify the affected districts before making any correction.

(d) The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman
General Counsel
Texas Water Development Board
Effective date: June 23, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

31 TAC §356.34, §356.35

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

§356.34. District Adoption of the Desired Future Condition.

Each district shall adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Submission Package) is administratively complete.

§356.35. Modeled Available Groundwater.

The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 3, 2016.

TRD-201602840
Les Trobman
General Counsel
Texas Water Development Board
Effective date: June 23, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

31 TAC §356.41, §356.42

STATUTORY AUTHORITY

The new rules are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

§356.41. Petition: Required Administrative Review and Scientific and Technical Study.

(a) The agency will perform an administrative review of the desired future condition adopted by the district under Texas Water Code §36.108(d-4) to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

(b) The agency will complete and deliver to the Office a scientific and technical analysis of the desired future condition considering the criteria listed in Texas Water Code §36.1083(e)(2) within 120 days after receiving a copy of the petition from the district. The scientific and technical analysis of the desired future condition will be conducted according to the guidance published on the agency website.

§356.42. Petition: Mediation of Issues.

(a) In accordance with Texas Water Code §36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details and technical complexity of issues in the petition, the executive administrator may direct agency staff to mediate the issues raised in the petition or contract with an independent mediator.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 3, 2016.

TRD-201602841
Les Trobman
General Counsel
Texas Water Development Board
Effective date: June 23, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §356.53

STATUTORY AUTHORITY

The amendment is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rule-making is also adopted under the authority of Chapter 36 of the Texas Water Code.

The adopted rulemaking affects Chapter 36 of the Texas Water Code.

§356.53. Plan Submission.

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

(1) one hard copy of the adopted management plan;

(2) one electronic copy of the adopted management plan; and

(3) documentation that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) shall be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 3, 2016.

TRD-201602842
Les Trobman
General Counsel
Texas Water Development Board
Effective date: June 23, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.41 - 356.46

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) Chapter 356, §§356.41 - 356.46. The proposal is adopted without changes as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 942).

DISCUSSION OF THE REPEAL

The TWDB adopts these repeals in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 in 2015 by the 84th Texas Legislature. Changes to existing rules and proposed new rules to conform to the HB 200 amendments are being adopted simultaneously elsewhere in this issue of the *Texas Register.*

House Bill 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a groundwater conservation district (District). These repealed rules reflect the change in statute that removes the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted 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 Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not 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; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, the adopted repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this repealed rule constitutes neither a statutory nor a constitutional taking of private real property. The repealed rules do not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific purpose of the repeals is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The repealed rules substantially advance this stated purpose by incorporating applicable language from the Texas Water Code. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENT

No public comments were received.

STATUTORY AUTHORITY

The repeals are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and also under the authority of Texas Water Code Chapter 36, concerning the procedures for the appeal of a desired future condition adopted by a groundwater conservation district.

This rulemaking affects Texas Water Code, Chapter 36.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 3, 2016.

TRD-201602837
Les Trobman
General Counsel
Texas Water Development Board
Effective date: June 23, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts adopts amendments to §5.160, concerning incorporation by reference: accounting policy statements 2015 - 2016, without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2873). The Accounting Policy Statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System and for preparation of the annual financial report. This section is being amended to update the effective dates of the Accounting Policy Statements incorporated by reference. The section is also being amended to update the website address where the Accounting Policy Statements may be found.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, §§403.011, 2101.012, 2101.035, and 2101.037 which provide the comptroller with the authority to supervise and manage the state's fiscal concerns, prescribed rules and procedures relating to the operation of the Uniform Statewide Accounting System and the preparation of the annual financial report.

This amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 2, 2016.

TRD-201602773
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: June 22, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 475-0387

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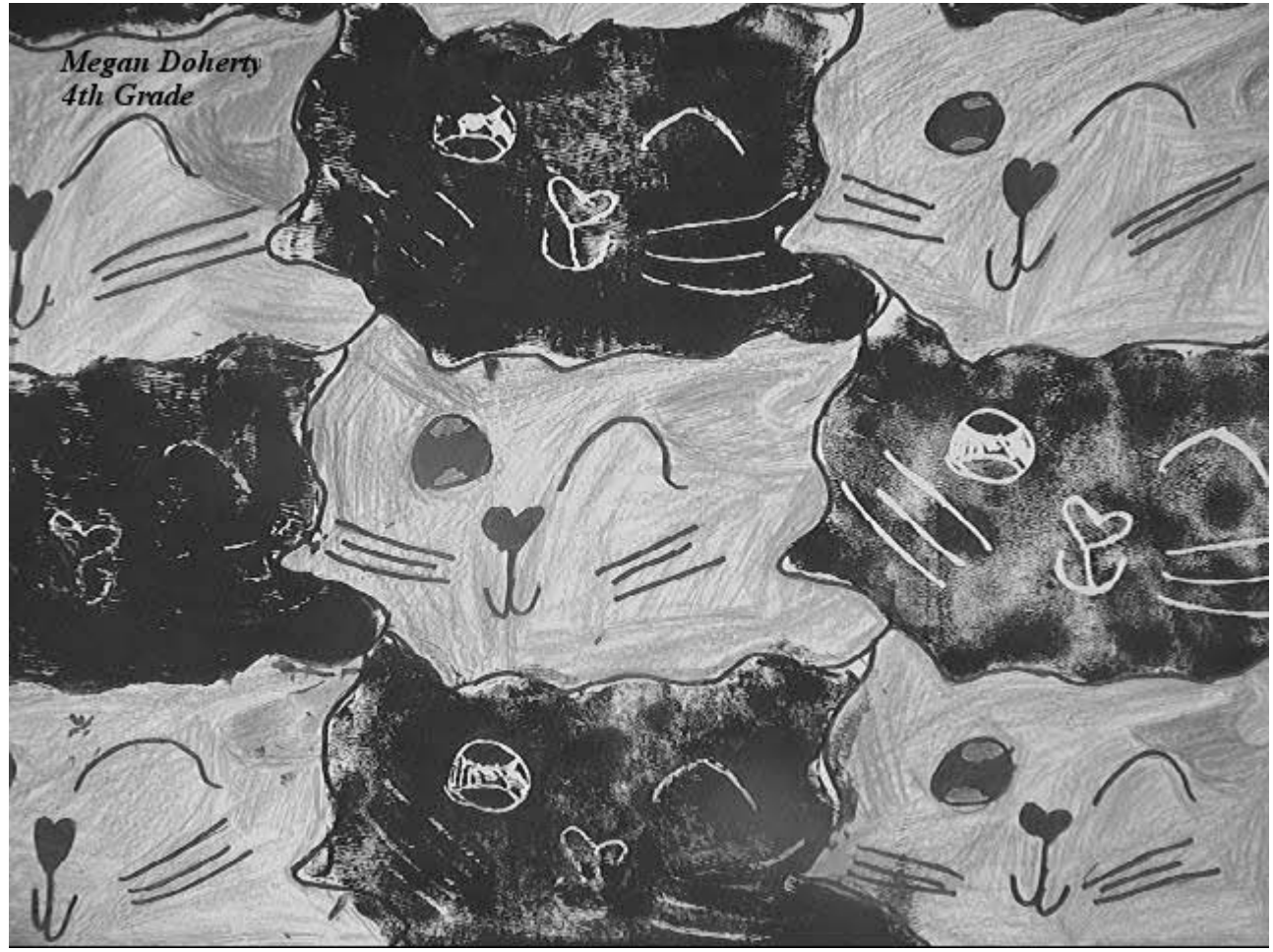
Megan Doherty
4th Grade

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

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Administration, Part 3, Office of the Attorney General, Chapter 55, concerning Child Support Enforcement. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The OAG proposes to review Chapter 55, Child Support Enforcement, Subchapter A, General Guidelines, §§55.1 - 55.5; Subchapter B, Locate-Only Services, §55.31 and §55.32; Subchapter C, Administrative Review, §§55.101 - 55.105; Subchapter D, Forms for Child Support Enforcement, §§55.111, 55.112, 55.115 - 55.121; Subchapter F, Collections and Distributions, §§55.140 - 55.142; Subchapter G, Authorized Costs and Fees in IV-D Cases, §§55.151 - 55.155; Subchapter H, License Suspension, §§55.201 - 55.209, 55.212 - 55.216; Subchapter I, State Directory of New Hires, §§55.301 - 55.308; Subchapter J, Voluntary Paternity Acknowledgment Process, §§55.401 - 55.409; Subchapter K, Release of Information, §55.501; Subchapter L, Financial Institution Data Matches, §§55.551 - 55.558; Subchapter M, Intercept of Insurance Claims, §§55.601 - 55.606; Subchapter N, National Medical Support Notice, §§55.701 - 55.707; Subchapter O, State Disbursement Unit, §§55.801 - 55.804; and Subchapter P, Review and Adjustment of a Support Order, §55.851.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Ildefonso Ochoa, Deputy Director for Policy, Legal and Program Operations, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

TRD-201602893
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 8, 2016

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The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Administration, Part 3, Office of the Attorney General, Chapter 66, concerning Family Trust Fund Disbursement Procedures. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The OAG proposes to review Chapter 66, Child Support Enforcement, Subchapter A, General Provisions and Eligibility, §§66.1 - 66.3, 66.5, 66.7, and 66.9; Subchapter B, Grant Application, Scope of Grant, Approval and Funding, §§66.15, 66.17, 66.19, 66.21, and 66.23; Subchapter C, Special Conditions and Required Documents, §§66.33, 66.35, 66.37, 66.41, and 66.47; Subchapter D, Award and Grant Acceptance, §§66.55, 66.57, and 66.59; Subchapter E, Administering Grants, §§66.67, 66.69, 66.75, 66.77, 66.79, 66.93, 66.95, 66.99, 66.101, 66.103, 66.105, 66.107, 66.109, and 66.111; and Subchapter F, Program Monitoring and Audits, §66.119 and §66.123.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Ildefonso Ochoa, Deputy Director for Policy, Legal and Program Operations, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

TRD-201602894
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 8, 2016

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Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 277, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an

assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 277 and has determined that the reasons for initially adopting the rules continue to exist: §277.1. Complaint Procedures, §277.2. Disciplinary Proceedings, §277.3 Probation, §277.4 Reinstatement, §277.5 Convictions, §277.6. Administrative Fines and Penalties, §277.7. Patient Records, §277.8. Emergency Temporary Suspension or Restriction, §277.9. Alternative Dispute Resolution, and §277.10. Remedial Plans.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 279, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 279 and has determined that the reasons for initially adopting the rules continue to exist:

§279.1. Contact Lens Examination, §279.2. Contact Lens Prescriptions, §279.3. Spectacle Examination, §279.4. Spectacle and Ophthalmic Devices Prescriptions, §279.5. Dispensing Ophthalmic Materials, §279.9. Advertising, §279.10. Professional Identification, §279.11. Relationship with Dispensing Optician - Books and Records, §279.12. Relationship with Dispensing Optician - Separation of Offices, §279.13. Board Interpretation Number Thirteen, §279.14. Patient Files, §279.15. Board Interpretation Number Fifteen and §279.16. Telehealth Services.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapter 280, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapter 280 and has determined that the reasons for initially adopting the rules continue to exist:

§280.1. Application for Certification, §280.2. Required Education, §280.3. Certified Therapeutic Optometrist Examination, §280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry, §280.6. Procedures Authorized for Therapeutic Optometrists, §280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation, §280.9. Application for Licensure as Optometric Glaucoma Specialist, §280.10. Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs, and §280.11. Treatment of Glaucoma by an Optometric Glaucoma Specialist.

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

TRD-201602811
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: June 2, 2016

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter AA, Commissioner's Rules Concerning the Commissioner's List of Electronic Instructional Materials; Subchapter BB, Commissioner's Rules Concerning State-Developed Open-Source Instructional Materials; Subchapter CC, Commissioner's Rules Concerning Acceptable Condition of Public School Printed Instructional Materials, Electronic Instructional Materials, and Technological Equipment; and Subchapter DD, Commissioner's Rules Concerning Instructional Materials Allotment, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 66, Subchapters AA-DD, in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8813).

The TEA finds that the reasons for adopting Subchapters AA-DD continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA-DD. At a later date, the TEA plans to revise Subchapters AA-DD to clarify the rules and bring them into alignment with the Texas Education Code, Chapter 31, Instructional Materials.

This concludes the review of 19 TAC Chapter 66.

TRD-201602752
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 1, 2016

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Application

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Office of the Attorney General (OAG) announces issuance of a Request for Proposal (RFP) TXCSES 2.0 (T2) Independent Verification and Validation (IV&V) Services according to the specifications contained in the RFP No. 302-16-3632, which has been posted on the following Electronic State Business Daily (ESBD) website as of May 27, 2016:

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=124781

Pursuant to TGC 2254.029 disclosure requirement, the subject services were previously provided to the OAG by the University of Texas Center for Advanced Research in Software Engineering.

A pre-proposal conference will be held in the Stephen F. Austin State Office Building, 1700 North Congress Ave., Room 170, Austin, Texas 78701 at 9:00 a.m. CT on June 9, 2016.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The OAG shall make the final decision on any contract award or awards resulting from this RFP. The OAG has sole discretion and may reject any and all offers, or terminate this RFP, amend or re-issue this RFP. The OAG reserves the right to remedy technical errors in the RFP process, waive any informalities and irregularities relating to any or all offers and qualifications submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of services resulting from this RFP. The issuance of this RFP does not constitute a commitment by the OAG to award any contract.

Offers may be submitted by hand delivery, commercial delivery (e.g., FedEx, UPS, DHL), or courier to the address listed below:

Office of the Attorney General

Procurement and Grant Operations Division

Attn: Elizabeth Ward, CTPM

W.P. Clements Building

300 W. 15th St., 3rd Floor

Austin, Texas 78701-1649

The last day to submit proposals is July 20th, 2016 (2:00 p.m.) Central Time (CT).

All dates are subject to change at OAG's discretion. Please monitor the Electronic State Business Daily (ESBD) website for updates, information and changes to the RFP.

The sole point of contact for inquiries concerning this RFP is:

Office of the Attorney General

Procurement and Grant Operations Division

Elizabeth Ward, CTPM

W.P. Clements Building

300 W. 15th St., 3rd Floor

Austin, Texas 78701-1649

Phone number: (512) 475-4489

Elizabeth.Ward@texasattorneygeneral.gov

All communications relating to this RFP must be directed to the OAG contact person named above. All communications between respondents and other OAG staff members concerning this RFP are strictly prohibited. **Failure to comply with these requirements may result in proposal disqualification.**

TRD-201602818
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 2, 2016

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Concho Valley Workforce Development Board

Request for Proposals

The Concho Valley Workforce Development Board is issuing a Request for Proposals (RFP) seeking qualified parties to submit proposals for on-line, accredited high school diploma/High School Equivalent (HSE) degree program. If interested, a copy of the RFP is available at:

http://www.cvworkforce.org/155/Procurements

TRD-201602874
Mike Buck
Executive Director
Concho Valley Workforce Development Board
Filed: June 7, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/13/16 - 06/19/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/13/16 - 06/19/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201602872

Leslie L. Pettijohn
Commissioner
Office of the Consumer Credit Commissioner
Filed: June 7, 2016

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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 18, 2016. 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 18, 2016. 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: BEACH AND TENNIS CLUB, INCORPORATED; DOCKET NUMBER: 2016-0178-PWS-E; IDENTIFIER: RN106013691; LOCATION: The Colony, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.45(f)(1) and (4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate of at least 0.6 gallons per minute per connection; and 30 TAC §290.46(e)(3)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; PENALTY: $400; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Arlington; DOCKET NUMBER: 2016-0282-PST-E; IDENTIFIER: RN102013034; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convention center; RULES 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; PENALTY: $2,813; Supplemental Environmental Project offset amount of $2,251; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Deport; DOCKET NUMBER: 2016-0376-MWD-E; IDENTIFIER: RN101919256; LOCATION: Deport, Lamar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Liberty; DOCKET NUMBER: 2015-1549-MWD-E; IDENTIFIER: RN102078128; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010108001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $48,800; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Rose City; DOCKET NUMBER: 2016-0255-PWS-E; IDENTIFIER: RN102676269; LOCATION: Rose City, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) 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 locational running annual average; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the non-acute surface water treatment technique violation for the month of November 2015; PENALTY: $310; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Containment Solutions, Incorporated; DOCKET NUMBER: 2016-0440-AIR-E; IDENTIFIER: RN100214378; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: plastic manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1079, General Terms and Conditions, by failing to certify for at least each 12-month period following initial permit issuance and submit the Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §205.6 and TWC, §5.702, by failing to pay general permit stormwater fees and associated late fees for TCEQ Financial Administration Account Number 20029496 due for Fiscal Year 2016; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: David Roesler; DOCKET NUMBER: 2016-0397-WOC-E; IDENTIFIER: RN108899030; LOCATION: Denison, Grayson County; TYPE OF FACILITY: mobile home community; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Edward Hykel Jr.; DOCKET NUMBER: 2016-0840-WOC-E; IDENTIFIER: RN109138263; LOCATION: West, McLennan County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Hal S. Zaltsberg dba Outskirtz Grill; DOCKET NUMBER: 2016-0214-PWS-E; IDENTIFIER: RN107954133; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new PWS; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a well into service as a PWS source; PENALTY: $110; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Jacob S. Phariss; DOCKET NUMBER: 2016-0841-WOC-E; IDENTIFIER: RN106424880; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: MAC HEAVY EQUIPMENT, LIMITED, L.L.P.; DOCKET NUMBER: 2016-0209-AIR-E; IDENTIFIER: RN104928700; LOCATION: Mineola, Wood County; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(9), Texas Health and Safety Code, §382.085(b), and Standard Permit Registration Number 79270, General Requirements Number 1(K)(i), by failing to maintain and operate all fabric filter systems with no tears or leaks; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: MALBER, LLC; DOCKET NUMBER: 2016-0127-PST-E; IDENTIFIER: RN102392990 (Facility 1) and RN100826452 (Facility 2); LOCATION: El Paso, El Paso County; TYPE OF FACILITY: two properties with inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: MAPLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0234-MLM-E; IDENTIFIER: RN101458156; LOCATION: Maple, Bailey County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters at least once every three years; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90090011 for Fiscal Years 2014 and 2015; and 30 TAC §288.20(c), by failing to provide an up-to-date drought contingency plan; PENALTY: $169; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(14) COMPANY: MCCREERY AVIATION COMPANY, INCORPORATED; DOCKET NUMBER: 2016-0557-PST-E; IDENTIFIER: RN101682144; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: refueling facility with retail sales of aviation fuel and fleet refueling of diesel; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor all underground storage tanks for releases at a frequency of at least once every month; PENALTY: $7,125; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Micah S. West; DOCKET NUMBER: 2016-0379-LII-E; IDENTIFIER: RN105012173; LOCATION: Little Elm, Denton County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §344.24(a) and 30 TAC §344.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2016-0210-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3387, Special Terms and Conditions Number 18, and New Source Review Permit Numbers 6056 and PSDTX1062M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $25,000; Supplemental Environmental Project offset amount of $12,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Orion Engineered Carbons LLC; DOCKET NUMBER: 2016-0324-AIR-E; IDENTIFIER: RN100209386; LOCATION: Orange, Orange County; TYPE OF FACILITY: carbon black plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance conditions; PENALTY: $16,650; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Ovidio Saldivar; DOCKET NUMBER: 2016-0396-WOC-E; IDENTIFIER: RN108870270; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Presidio County Water Improvement District 1 dba Redford Water Supply; DOCKET NUMBER: 2016-0252-PWS-E; IDENTIFIER: RN101266054; LOCATION: Redford, Presidio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter for the fourth quarter of 2014 through the third quarter of 2015, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR to the ED for

the fourth quarter of 2014 and the first quarter of 2015; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the second quarter of 2014 and the failure to collect lead and copper tap samples for the January 1, 2012 - December 31, 2014 monitoring period; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for arsenic based on the running annual average for the first quarter of 2015 through the third quarter of 2015; PENALTY: $900; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(20) COMPANY: W and W Fiberglass Tank Company; DOCKET NUMBER: 2016-0203-AIR-E; IDENTIFIER: RN102004314; LOCATION: Pampa, Gray County; TYPE OF FACILITY: fiberglass manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2448, General Terms and Conditions, by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: $4,313; Supplemental Environmental Project offset amount of $1,725; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(21) COMPANY: Wall Co-Operative Gin dba Wall Coop Gin 1; DOCKET NUMBER: 2016-0789-PST-E; IDENTIFIER: RN101729945; LOCATION: Wall, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Keith Franks, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(22) COMPANY: Wall Co-Operative Gin dba Wall Coop Gin 2; DOCKET NUMBER: 2016-0790-PST-E; IDENTIFIER: RN101912806; LOCATION: Wall, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Keith Franks, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(23) COMPANY: WKND CORPORATION dba Mercado Sabadomingo; DOCKET NUMBER: 2016-0172-PWS-E; IDENTIFIER: RN101207025; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1), by failing to locate groundwater sources so that there will be no danger of pollution from flooding or from unsanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells; 30 TAC §290.43(d)(3), by failing to equip the air injection lines with filters or other devices to prevent compressor lubricants or other contaminants from entering the facility's pressure tank; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.43(c), (c)(3), and (c)(4), by failing to ensure that all facilities for potable water storage are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; and 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: $662; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201602868
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 7, 2016

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Enforcement Orders

An agreed order was adopted regarding TEXAS ARCHITECTURAL AGGREGATE, INC., Docket No. 2015-1308-WQ-E on June 7, 2016 assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAL FARLEY'S BOYS RANCH, Docket No. 2015-1339-MWD-E on June 7, 2016 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LANDMARK INDUSTRIES ENERGY, LLC DBA TIMEWISE EXXON 816, Docket No. 2015-1548-PST-E on June 7, 2016 assessing $3,879 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Travis County Water Control and Improvement District 18, Docket No. 2015-1578-PWS-E on June 7, 2016 assessing $702 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LERRET ENTERPRISES, INC. dba Terrel Service Center, Docket No. 2015-1583-PST-E on June 7, 2016 assessing $4,630 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kevin Reinhardt, Docket No. 2015-1694-LII-E on June 7, 2016 assessing $1,700 in administrative penalties with $340 deferred. Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunoco Pipeline L.P., Docket No. 2015-1725-AIR-E on June 7, 2016 assessing $2,625 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rochelle M. Miller, Docket No. 2016-0024-PWS-E on June 7, 2016 assessing $163 in administrative penalties with $32 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOHIT PETROLEUM, LLC dba Texas Country Store 10, Docket No. 2016-0045-PST-E on June 7, 2016 assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BNSF Railway Company, Docket No. 2016-0051-AIR-E on June 7, 2016 assessing $3,250 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ladonia, Docket No. 2016-0061-PWS-E on June 7, 2016 assessing $1,551 in administrative penalties with $310 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ted Macon and Lolita Sneathern, Docket No. 2016-0062-PWS-E on June 7, 2016 assessing $1,152 in administrative penalties with $230 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2016-0063-PWS-E on June 7, 2016 assessing $474 in administrative penalties with $94 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Montesino Developments, LLC dba Cash Register Services, Docket No. 2016-0069-PWS-E on June 7, 2016 assessing $748 in administrative penalties with $149 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose Montoya, Docket No. 2016-0101-MSW-E on June 7, 2016 assessing $1,070 in administrative penalties with $214 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R.J. Dairy, L.L.C., Docket No. 2016-0154-AGR-E on June 7, 2016 assessing $1,563 in administrative penalties with $312 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hitchcock, Docket No. 2016-0181-MLM-E on June 7, 2016 assessing $2,188 in administrative penalties with $437 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS WATER SYSTEMS, INC., Docket No. 2016-0208-PWS-E on June 7, 2016 assessing $168 in administrative penalties with $33 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONEOK Hydrocarbon Southwest, LLC, Docket No. 2013-1186-AIR-E on June 8, 2016 assessing $14,858 in administrative penalties with $2,971 deferred. Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Roberta Schoch, Docket No. 2014-1858-WR-E on June 8, 2016 assessing $695 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding F & K ENTERPRISE, INC. dba Kwik Mart, Docket No. 2015-0670-PST-E on June 8, 2016 assessing $17,538 in administrative penalties with $3,507 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Benedum Gas Partners, L.P., Docket No. 2015-0743-AIR-E on June 8, 2016 assessing $23,978 in administrative penalties with $4,795 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WATER NECESSITIES, INC., Docket No. 2015-0810-PWS-E on June 8, 2016 assessing $300 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding James H. Kim dba Casey Ridge Grocery, Docket No. 2015-0885-PST-E on June 8, 2016 assessing $30,519 in administrative penalties with $6,103 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RANGER UTILITY COMPANY, Docket No. 2015-1033-PWS-E on June 8, 2016 assessing $11,310 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AAA NURSERY/SAND & STONE, INC., Docket No. 2015-1058-MLM-E on June 8, 2016 assessing $12,262 in administrative penalties with $2,452 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2015-1104-AIR-E on June 8, 2016 assessing $372,625 in administrative penalties with $74,525 deferred. Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Alamo Heights, Docket No. 2015-1106-PWS-E on June 8, 2016 assessing $1,362 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Ruben Sylva, Docket No. 2015-1158-MLM-E on June 8, 2016 assessing $12,547 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ozona Retail, Inc. dba Circle Bar Truck Corral, Docket No. 2015-1252-PST-E on June 8, 2016 assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Centerville, Docket No. 2015-1282-MWD-E on June 8, 2016 assessing $7,491 in administrative penalties with $1,498 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Liberty Tire Recycling, LLC, Docket No. 2015-1470-MSW-E on June 8, 2016 assessing $22,500 in administrative penalties with $4,500 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOORE STATION WATER SUPPLY CORPORATION, Docket No. 2015-1608-PWS-E on June 8, 2016 assessing $4,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Smurfit Kappa Orange County LLC, Docket No. 2015-1659-AIR-E on June 8, 2016 assessing $25,790 in administrative penalties with $5,158 deferred. Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Spring Meadow Mobile Home Park, LLC, Docket No. 2015-1666-PWS-E on June 8, 2016 assessing $240 in administrative penalties with $240 deferred. Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Lake Corpus Christi RV Park & Marina, L.L.C., Docket No. 2015-1670-PWS-E on June 8, 2016 assessing $765 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gary D. Steed dba Canyon Dam Mobile Home Park and Patty M. Steed dba Canyon Dam Mobile Home Park, Docket No. 2015-1680-PWS-E on June 8, 2016 assessing $750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Sansom Park, Docket No. 2015-1720-PWS -E on June 8, 2016 assessing $321 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201602889
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Notice of Correction to Agreed Order Number 10

In the December 4, 2015, issue of the *Texas Register* (40 TexReg 8823), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically item Number 10, for Warren Alkek dba Fastop 6. The error is as submitted by the commission.

The reference to 30 TAC §290.45 should be corrected to read: 30 TAC §290.45(d)(2)(B)(ii) and (iii).

For questions concerning this error, please contact Melissa Cordell at (512) 239-2483.

TRD-201602867
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 7, 2016

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Notice of District Petition

Notice issued May 25, 2016

TCEQ Internal Control No. D-02082016-005; Fulshear Investments, Inc. and Fulshear Equine, LLC (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 174 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners holds title to a majority in value of the land to be included in the proposed District; (2) there are three lienholders, Amegy Bank National Association, Fulshear Investments, Inc., and Cadence Bank, N.A., on the property to be included in the proposed District and the before mentioned entities

have consented to the petition; (3) the proposed District will contain approximately 270.482 acres located within Fort Bend County, Texas; and (4) the proposed District is within the corporate limits of the City of Fulshear, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2016-1210, passed, approved, and adopted January 5, 2016, the City of Fulshear gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $26,760,000 ($20,745,000 for utilities plus $4,300,000 for road projects plus $1,715,000 for park and recreational facilities).

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 or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

Issued in Austin, Texas on June 7, 2016

TRD-201602879
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Notice of Hearing

Southstar at Vintage Oaks, LLC

SOAH Docket No. 582-16-4418

TCEQ Docket No. 2016-0229-MWD

Permit No. WQ0015320001

APPLICATION.

SouthStar at Vintage Oaks, LLC, 1114 Lost Creek Boulevard, Suite 270, Austin, Texas 78746, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new TCEQ Permit No. WQ0015320001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day via surface irrigation of 40 acres of public access open areas with trails. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on December 3, 2014.

The wastewater treatment facility and disposal site will be located in the Vintage Oaks at the Vineyard subdivision, 0.2 mile east of the intersection of Vintage Way and State Highway 46, partially within the City of New Braunfels's extraterritorial jurisdiction, in Comal County, Texas 78132. The wastewater treatment facility and disposal site will be located in the drainage basin of Dry Comal Creek in Segment No. 1811 of the Guadalupe River Basin.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the New Braunfels Public Library, 700 Common Street, New Braunfels, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.77114&lng=-98.2618&zoom=13&type=r. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - July 18, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 18, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687

4040. General information about the TCEQ can be found at our web site at http://www.tceq.texas.gov/.

Further information may also be obtained from SouthStar at Vintage Oaks, LLC at the address stated above or by calling Ms. Jamie Miller, P.E., Integrated Water Services, at (303) 993-3713.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: June 3, 2016

TRD-201602883
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 18, 2016.** 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 18, 2016.** 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: Fuel Centers Environmental Management, LLC dba Tetco 734; DOCKET NUMBER: 2015-0850-PST-E; TCEQ ID NUMBER: RN102717816; LOCATION: 1800 K Avenue, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a 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; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C - at the facility; PENALTY: $5,129; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Jim Lampman and Teresa Lampman; DOCKET NUMBER: 2015-0757-WR-E; TCEQ ID NUMBER: RN104808902; LOCATION: directly south of Farm-to-Market Road 587 between county roads 461 and 459 (Nathaniel Green Survey 9, Abstract 388), Comanche County; TYPE OF FACILITY: real property; RULE VIOLATED: TWC, §11.031(a), by failing to submit to the TCEQ by March 1, 2014, the Annual Water Use Report (WUR) associated with Certificate of Adjudication (ADJ) Number 12-3544 for the calendar year 2013; and TWC, §11.031(a), by failing to submit to the TCEQ by March 1, 2015, the Annual WUR associated with ADJ Number 12-3544 for the calendar year 2014; PENALTY: $399; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: OLSEN ESTATES PROPERTY OWNER'S ASSOCIATION; DOCKET NUMBER: 2014-1682-PWS-E; TCEQ ID NUMBER: RN101255057; LOCATION: 15303 Interstate Highway 10 East near Baytown, Chambers County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(C)(ii), by failing to provide a total storage capacity of 200 gallons per connection; and THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; PENALTY: $918; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Saeb Kutob dba ARP Food Store; DOCKET NUMBER: 2015-1245-PST-E; TCEQ ID NUMBER: RN105187041; LOCATION: 111 South Main Street, Arp, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a 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 UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $9,000; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: TEMPLE FUEL INC. dba Nugent Food Mart; DOCKET NUMBER: 2015-0880-PST-E; TCEQ ID NUMBER: RN101672186; LOCATION: 1307 North General Bruce Drive, Temple, Bell County; TYPE OF FACILITY: underground storage tank (UST) system and a 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); PENALTY: $6,750; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201602865

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 7, 2016

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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 18, 2016.** 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 18, 2016.** 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, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Geronimo Casabon; DOCKET NUMBER: 2015-0605-LII-E; TCEQ ID NUMBER: RN107206658; LOCATION: 1700 Burton Drive, Austin, Travis County; TYPE OF FACILITY: landscape irrigator; RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5(b), by advertising or representing himself to the public as a holder of a license or registration without possessing a license or current registration or employing an individual who holds a current license or registration; PENALTY: $262; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Juan Castro; DOCKET NUMBER: 2015-1454-MSW-E; TCEQ ID NUMBER: RN106035553; LOCATION: 29289 Orange Grove Road, La Feria, Cameron County; TYPE OF FACILITY: unauthorized used oil collection and storage facility; RULES VIOLATED: Texas Health and Safety Code, §371.041, 30 TAC §324.4(1), 40 CFR §279.22(d), and TCEQ AO Docket Number 2011-0054-MSW-E, Ordering Provision Number 2.c.i., by failing to prevent the storage of used oil in a manner that endangers the public health or environment and by failing to perform response action upon detection of a release of used oil; and 30 TAC §324.1, 40 CFR §279.22(c)(1), and TCEQ AO Docket Number 2011-0054-MSW-E, Ordering Provision Number 2.c.ii., by failing to mark or clearly label used oil storage containers with the words Used Oil; PENALTY: $10,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: William E. Vlasek dba Village West Water System; DOCKET NUMBER: 2015-1187-PWS-E; TCEQ ID NUMBER: RN101189660; LOCATION: corner of Industrial and Cotton Gin Lane, near Ingram, Kerr County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC, §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence or well house around the well unit, portable water storage tanks, and pressure maintenance facilities that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to develop, maintain, and make available for the executive director's review upon request an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross connections or other potential contamination hazards exist; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11570 for calendar year 2014; PENALTY: $467; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201602866
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 7, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

Nasser Farahnakian DBA Sunrise Food Mart

SOAH Docket No. 582-16-4538

TCEQ Docket No. 2015-1773-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 7, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 31, 2016, concerning assessing administrative penalties against and requiring certain actions of Nasser Farahnakian dba Sunrise Food Mart, for violations in Nueces County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Tex. Admin. Code §§334.50(b)(1)(A), 334.72 and 334.74.

The hearing will allow Nasser Farahnakian dba Sunrise Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Nasser Farahnakian dba Sunrise Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Nasser Farahnakian dba Sunrise Food Mart** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Nasser Farahnakian dba Sunrise Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Tracy Chandler, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 7, 2016

TRD-201602882
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Notice of Public Meeting for a Proposed Beneficial Use Site Registration Number 711020

An application for a proposed beneficial use site registration number 711020 for:

Applicant and Landowner: Harrington Environmental Services, LLC

1632 Royalwood Circle

Joshua, Texas 76058

Type of Operation: Beneficial land application of domestic septage products only.

Location of Site: The site is located at 7501 County Road 1009, Godley, in Johnson County, Texas 76044. This web address to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application.

http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.439444&lng=-97.48138&zoom=13&type=r

Remarks: The applicant is seeking authorization to land apply domestic septage at agronomic rates on approximately 64.82 acres.

The application is subject to technical evaluation by the staff of the TCEQ. Persons should be advised that the application is subject to change based on evaluations of the proposed treatment levels, treatment processes and site specific conditions as they relate to the protection of the environment and public health.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application.

The Public Meeting is to be held:

Thursday, June 30, 2016, at 7:00 p.m.

Joshua ISD Community Room

907 South Broadway

Joshua, Texas 76058

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The TCEQ mailed a copy of the application for registration to the Johnson County Judge for viewing by interested parties. For further information concerning this application, you may contact the authorized person to act for the applicant, Ms. Elizabeth Andaverde, Source Environmental Sciences, Inc., at (713) 621-4474.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: June 7, 2016

TRD-201602881
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Notice of Water Quality Application

The following notice was issued on May 26, 2016. The following does not require publication in a newspaper. Written comments or requests for a public meeting 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 ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of Texas Land Application Permit No. WQ0014750001 issued to Cal Farley's Boys Ranch, to update the treatment process and disposal description and specifications. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via surface irrigation of 56 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located approximately 0.2 mile north and 1.6 miles east of the intersection of U.S. Highway 385 and Spur 233, in Oldham County, Texas 79010. The wastewater treatment facility and disposal site are located in the drainage basin of the Canadian River in Segment No. 0103 of the Canadian River Basin.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201602887
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

♦ ♦ ♦

Notice of Water Rights Application

Notices issued May 24, 2016 through May 26, 2016

APPLICATION NO. 14-1823D; Bill Doyle and Sandra Doyle, 9451 Turkey Barn Lane, Menard, Texas 76859, Applicants, have applied to amend their portion of Certificate of Adjudication No. 14-1823 to add a downstream diversion point on the San Saba River, Colorado River Basin in Menard County. Applicants do not seek to increase the diversion rate. The application and fees were received on December 21, 2013. Additional information and fees were received on August 11, 2014 and October 2, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk October, 16, 2014. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, the installation of screens on the diversion structure. The application, technical memoranda, and Executive Director's draft amendment are available for reviewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by June 10, 2016.

APPLICATION NO. 19-2178D; Mike D. Doguet, Lisa Doguet, Robert D. Frankfather, and Tobi J.V. Frankfather, 2055 Diamond D Drive, Beaumont, Texas 77713, Applicants, seek to amend Certificate of Adjudication No. 19-2178 to divert authorized water from a diversion reach on the San Antonio River, San Antonio River Basin for storage in off-channel reservoirs for subsequent diversion and use for mining purposes in those portions of Wilson and Karnes Counties partially within the San Antonio and Nueces River Basins. The application was received on February 5, 2015. Additional information and fees were received on August 19, August 24, September 10, and December 29, 2015; January 7, and 25, and February 2, 4, 8, 11, 18, and 23, and March 18, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 11, 2016. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, requiring the Owner to account for the quantity of water diverted. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by June 13, 2016.

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 or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "(I/we) request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested applica-

tion which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (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 (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on June 7, 2016

TRD-201602880
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 8, 2016

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Texas Facilities Commission

Request for Proposals #303-7-20566

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), the Department of State Health Services (DSHS), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-7-20566. TFC seeks a five (5) or ten (10) year lease of approximately 8,476 square feet of office space in Lewisville, Texas.

The deadline for questions is June 27, 2016 and the deadline for proposals is July 15, 2016 at 3:00 p.m. The award date is August 17, 2016. 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 Program Specialist, 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=124785.*

TRD-201602878
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 7, 2016

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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 31, 2016, through June 3, 2016. 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 Friday, June 10, 2016. The public comment period for this project will close at 5:00 p.m. on Saturday, July 9, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: BHP Billiton Petroleum (Deepwater) Inc. - Bureau of Ocean Energy Management (BOEM)

Location: Outer Continental Shelf, Alaminos Canyon Area Blocks 82, 83, 125, and 126

Project Description: BHP Billiton Petroleum (Deepwater) Inc. (BHPB) has submitted to BOEM an Initial Exploration Plan for Alaminos Canyon Area Blocks 82, 83, 125, and 126. (Leases OCS-G 35753, 35754, 35744, 35756). Under this plan, BHPB is proposing to drill and mudline suspend thirteen (13) wells in the Alaminos Canyon Area, Blocks 82, 83, 125, and 126. BHPB proposes to commence drilling operations by October 1, 2016.

CMP Project No: 16-1331-F4

Type of Application: OCS Plan

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 Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201602897
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: June 8, 2016

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Texas Health and Human Services Commission

Notice of Public Hearing on Health and Human Services Commission Strategic Plan 2017 - 2021

CORRECTED TIME ZONE

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on **Friday, June 17, 2016, at 1:00 p.m., Central Daylight Time.** HHSC, Department of State Health Services (DSHS), Department of Family and Protective Services (DFPS), Department of Assistive and Rehabilitative Services, and Department of Aging and Disability Services will conduct a public hearing to receive stakeholder input for the health and human services strategic plan for 2017 - 2021. HHSC, DFPS, and DSHS will each develop strategic

plans, and HHSC will develop a Coordinated Strategic Plan covering all five health and human services agencies.

1. Welcome and introductions

2. Public comment

3. Adjourn

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through Security at the south entrance to the building. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Strategic Planning Unit at (512) 206-5802 at least 72 hours prior to the hearing so appropriate arrangements can be made.

In-Person and Telephone Testimony. Public testimony will be taken in person at the meeting as well as via telephone. Every person wishing to testify at the hearing will be required to register at the meeting. Every person wishing to testify via telephone must submit an e-mail to *strategicplancomments@hhsc.state.tx.us* no later than 1:00 p.m. CST on Friday, June 17, 2016; the e-mail must include the person's name, a telephone number where he or she can be reached, and a statement requesting to submit oral testimony via telephone. Testimony will first be taken from all persons present at the meeting and will be followed by testimony submitted via telephone. Call-in: 1-877-226-9790; Access Code: 5950374.

Written Comments. Written comments will be taken until 5:00 p.m. on Friday, June 17, 2016. Comments may be submitted to *strategicplancomments@hhsc.state.tx.us.*

Contact: Questions regarding agenda items, content, or meeting arrangements should be directed to Mathilde Hyams-Flores in the Strategic Planning Unit, HHSC, (512) 206-5802 or *strategicplancomments@hhsc.state.tx.us.*

TRD-201602845
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 3, 2016

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Skyline Branch Library, 6006 Everglade Road, Dallas, Texas 75227 at 6:00 p.m. on July 5, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $19,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Dalcor Skyline, Ltd., a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 318-unit multifamily housing development located at 4700 Wimbleton Way, Dallas, Texas 75227 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or *shannon.roth@tdhca.state.tx.us.*

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. *Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.*

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-201602900
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 8, 2016

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Notice of Public Hearing and Public Comment Period on the Draft 2017 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs ("the Department") will hold a public hearing to accept public comment on the Draft 2017 Regional Allocation Formula ("RAF") Methodology.

The public hearing will take place as follows:

Wednesday, June 29, 2016

3:00 p.m. Austin local time

Stephen F. Austin Building

1700 North Congress Avenue, Room 170

Austin, Texas 78701

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban areas within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Texas Governing Code, "the department shall develop a formula that... includes other factors determined by the department to be relevant to the equitable distribution of housing funds." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The Single Family HOME Investment Partnerships Program ("HOME"), Multifamily HOME, Housing Tax Credit ("HTC") and Housing Trust Fund ("HTF") program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Texas Government Code requires that 95% of HOME funding be set aside for non-participating jurisdictions ("non-PJs"). Therefore,

the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

Both the Multifamily and Single Family RAF methodologies explain the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The public comment period for the Draft 2017 RAF methodology will be open from Friday, June 17, 2016, through Friday July 1, 2016, at 6:00 p.m. Austin local time. Anyone may submit comments on the Draft 2017 RAF Methodology in written form or oral testimony at the June 29, 2016, public hearing. Written comments concerning the Draft 2017 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to *info@tdhca.state.tx.us,* or by fax to (512) 475-0070. Comments must be received no later than Friday July 1, 2016, at 6:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by e-mail at *elana.peinado@tdhca.state.tx.us* at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elana.peinado @tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201602864
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 7, 2016

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Release of the Notice of Funding Availability (NOFA) for the Texas Neighborhood Stabilization Program - Program Income

I. Source of Funds.

The Texas Department of Housing and Community Affairs' "Texas Neighborhood Stabilization Program - Program Income" ("NSP1-PI") originates from the Housing and Economic Recovery Act of 2008, which authorized the Neighborhood Stabilization Program ("NSP") funds as an adjunct to the U.S. Department of Housing & Urban Development's Community Development Block Grant Program. The NSP redevelops abandoned and foreclosed residential properties.

II. Notice of Funding Availability Summary.

The Texas Department of Housing and Community Affairs ("TDHCA") announces the availability of approximately $5,000,000 through the ("NSP1-PI") NOFA for a Homebuyer Assistance Program. On June 30, 2016, at 10:00 a.m. Austin Local Time, the funds will be available for reservation on the Department's online Reservation System on a first-come, first-served basis by eligible Applicants. If additional funding becomes available from loan payments and/or other sources, the Department may add additional funds to this NOFA.

The Department will begin accepting Applications to access the Reservation System starting on Monday, June 20, 2016, and will continue to grant access on an ongoing basis until all NSP1 HBA Program funds are reserved, or December 29, 2017, at 5:00 p.m. Austin Local Time, whichever is earlier.

Eligible Applicants are Developers as defined under NSP Notices that demonstrate existing ownership or control of Land Bank properties. Funding reservations under this NOFA are only available for Land Bank properties associated with the Department's NSP1 Program. These properties must be currently pending construction activities for the final eligible use of homeownership.

Homebuyer Assistance is available to low- to medium-income households (less than 120% of the Area Median Family Income for household size) for purchasing Land Bank properties in accordance to this NOFA and the NSP Technical Guide. Homebuyer Assistance may be utilized for reasonable closing costs, down payment assistance not to exceed 50% of the required down payment by the lender, principal reductions, and gap financing.

III. Additional Information.

The NSP1-PI NOFA is posted on the Department's website at http://www.tdhca.state.tx.us/nsp/index.htm.

Questions regarding the NSP NOFA may be addressed to Homero Cabello, Director of Single Family Operations and Services, at (512) 475-2118 or homero.cabello@tdhca.state.tx.us.

TRD-201602869
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 7, 2016

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas by ENVOLVE DENTAL OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201602888
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: June 8, 2016

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Correction of Error

The Texas Department of Insurance adopted amendments to 28 TAC §§21.4501 - 21.4507, concerning health care reimbursement rate information, in the June 3, 2016, issue of the *Texas Register* (41 TexReg 4027). An error appears on page 4034, first column, in §21.4503(15). The phrase "paragraph (17) of this section" should be "§3.3503(17) of this title." The corrected paragraph reads as follows:

"(15) Primary Plan--As defined in §3.3503(17) of this title."

TRD-201602895

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Texas Lottery Commission

Scratch Ticket Game Number 1772 "Cash 2 Go"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1772 is "CASH 2 GO". The play style is "key symbol match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1772 shall be $1.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1772.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: VAULT SYMBOL, HAT SYMBOL, MONEYBAG SYMBOL, STACK OF COINS SYMBOL, GOLD BAR SYMBOL, GREEN LIGHT SYMBOL, MOTORCYCLE SYMBOL, PIGGYBANK SYMBOL, TREASURE CHEST SYMBOL, RACE FLAG SYMBOL, WALLET SYMBOL, CAR SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 and $500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1772 - 1.2D

PLAY SYMBOL	CAPTION
VAULT SYMBOL	VAULT
HAT SYMBOL	HAT
MONEYBAG SYMBOL	MNYBAG
STACK OF COINS SYMBOL	COINS
GOLD BAR SYMBOL	GOLD
GREEN LIGHT SYMBOL	GRNLITE
MOTORCYCLE SYMBOL	CYCLE
PIGGYBANK SYMBOL	BANK
TREASURE CHEST SYMBOL	TRSURE
RACE FLAG SYMBOL	FLAG
WALLET SYMBOL	WALLET
CAR SYMBOL	CAR
$1.00	ONE$
$2.00	TWO$
$3.00	THR$
$4.00	FOR$
$5.00	FIV$
$6.00	SIX$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$500	FVHN

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $500.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

I. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1772), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1772-0000001-001.

J. Pack - A Pack of the "CASH 2 GO" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page. All Tickets will be tightly shrink-wrapped. There will be no break between Tickets in a Pack.

K. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH 2 GO" Scratch Ticket Game No. 1772.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASH 2 GO" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 10 (ten) Play Symbols. If a player matches any of YOUR SYMBOLS to the WINNING SYMBOL, the player wins the PRIZE. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 10 (ten) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. On winning Tickets, only one (1) YOUR SYMBOLS Play Symbol will match the WINNING SYMBOL Play Symbol.

E. All YOUR SYMBOLS Play Symbols will be different (i.e., no matching Play Symbols).

F. This Ticket consists of nine (9) Play Symbols and one (1) Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH 2 GO" Scratch Ticket Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "CASH 2 GO" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASH 2 GO" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.7 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 11,160,000 Scratch Tickets in Scratch Ticket Game No. 1772. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1772 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,202,800	9.28
$2	905,200	12.33
$3	161,200	69.23
$4	99,200	112.50
$5	124,000	90.00
$6	161,200	69.23
$10	49,600	225.00
$20	24,800	450.00
$50	4,340	2,571.43
$500	12	930,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1772 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1772, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201602870
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 7, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1801 "Texas Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1801 is "TEXAS LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1801 shall be $3.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1801.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE BOWL SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYMBOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONESTAR SYMBOL, THE CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILI PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL, THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL AND THE SADDLE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1801 - 1.2D

PLAY SYMBOL	CAPTION
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE CACTUS SYMBOL	THE CACTUS
THE BOWL SYMBOL	THE BOWL
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE BAT SYMBOL	THE BAT
THE PIÑATA SYMBOL	THE PIÑATA
THE COWBOY SYMBOL	THECOWBOY
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE SUNSET SYMBOL	THE SUNSET
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE MARACAS SYMBOL	THEMARACAS
THE LONESTAR SYMBOL	THE LONESTAR
THE CORN SYMBOL	THE CORN
THE HEN SYMBOL	THE HEN
THE SPEAR SYMBOL	THE SPEAR
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE WHEEL SYMBOL	THE WHEEL
THE PECAN TREE SYMBOL	THEPECANTREE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE BOAR SYMBOL	THE BOAR
THE ARMADILLO SYMBOL	THEARMADILLO
THE LIZARD SYMBOL	THELIZARD
THE CHILI PEPPER SYMBOL	THECHILIPEPPER
THE HORSESHOE SYMBOL	THEHORSESHOE
THE HORSE SYMBOL	THE HORSE
THE SHOES SYMBOL	THE SHOES
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE CHERRIES SYMBOL	THECHERRIES
THE OIL RIG SYMBOL	THE OIL RIG
THE MOONRISE SYMBOL	THE MOONRISE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE WINDMILL SYMBOL	THEWINDMILL
THE SPUR SYMBOL	THE SPUR
THE SADDLE SYMBOL	THESADDLE

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1801), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1801-0000001-001.

K. Pack - A Pack of the "TEXAS LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Scratch Ticket 001 and back of 075 while the other fold will show the back of Scratch Ticket 001 and front of 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "TEXAS LOTERIA" Scratch Ticket Game No. 1801.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TEXAS LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 30 (thirty) Play Symbols. The player scratches the CALLER'S CARD area to reveal 14 symbols.

The player scratches only the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. El jugador raspa las CARTA DEL GRITON para revelar 14 símbolos. El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTA DEL GRITON para revelar una línea completa horizontal, vertical o diagonal para ganar el premio para esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability

of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to three (3) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same spots.

C. No matching Play Symbols in the CALLER'S CARD play area.

D. On non-winning tickets, there will be at least one (1) near win. A near win is defined as matching three (3) of the four (4) Play Symbols to the CALLER'S CARD play area for a given row, column or diagonal.

E. At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

F. CALLER'S CARD Play Symbols will have a random distribution on the Ticket unless restricted by other parameters, play action or prize structure.

G. No matching Play Symbols are allowed on the PLAY BOARD play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTERIA" Scratch Ticket Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 or $300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTERIA" Scratch Ticket Game prize of $3,000 or $50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS LOTERIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TEXAS LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TEXAS LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 20,400,000 Scratch Tickets in Scratch Ticket Game No. 1801. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1801 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	2,312,000	8.82
$4	1,088,00	18.75
$7	680,000	30.00
$10	340,000	60.00
$17	272,000	75.00
$20	272,000	75.00
$30	68,000	300.00
$33	68,000	300.00
$50	25,500	800.00
$80	12,580	1,621.62
$300	8,840	2,307.69
$3,000	290	70,344.83
$50,000	14	1,457,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1801 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1801, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201602871
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 7, 2016

♦ ♦ ♦

Texas Medical Board

Correction of Error

The Texas Medical Board proposed to review 22 TAC Chapter 168 in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2779). In the first sentence of the rule review notice, the section number "161.2" should be "168.2". The corrected sentence reads as follows:

"The Texas Medical Board proposes to review Chapter 168, Criminal History Evaluation Letters, §168.1 and §168.2, pursuant to the Texas Government Code, §2001.039."

TRD-201602891

♦ ♦ ♦

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 May 31, 2016, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Friendship Cable of Texas, Inc. dba Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46004.

The requested amendment is to expand the service area footprint to include the municipal boundaries of Frisco, Texas.

Information on the application may be obtained by contacting the commission 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 through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46004.

TRD-201602814
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 2, 2016

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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 1, 2016, to amend a state-issued certificate of franchise authority (SICFA), pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Time Warner Cable Texas LLC for Amendment to a State-Issued Certificate of Franchise Authority For Name Change and Transfer of Ownership, Project Number 46020.

Application: The application seeks an amendment to Time Warner Cable Texas LLC's SICFA No. 90008 to reflect a transfer in ownership and a name change. As of May 18, 2016, Time Warner became an indirect, wholly-owned subsidiary of Charter Communications, Inc. Time Warner requests a name change to "Time Warner Cable Texas LLC d/b/a Time Warner Cable and/or Charter Communications." No change is requested to Time Warner's existing service area footprint.

Information on the application may be obtained by contacting the commission 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 through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46020.

TRD-201602843
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2016

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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 6, 2016, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Grande Communications Networks LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46036.

The requested amendment is to expand the service area footprint to include the municipal boundaries of Roanoke, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46036.

TRD-201602890
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2016

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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 6, 2016, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Cable One, Inc. for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46038.

The requested amendment is to expand the service area footprint to include an area served in Grayson and Fanning Counties, Texas, as depicted on the maps attached to the application.

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 through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46038.

TRD-201602892
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 31, 2016, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Mariah del Norte Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 46006.

The Application: On May 31, 2016, Mariah del Norte (Mariah) filed an application for approval of the issuance of passive equity interests (Class A interests) to MidAmerican Wind Tax Equity Holdings, LLC, Citicorp North America, Inc., and HSBC USA Inc. (collectively, Investors). The combined generation owned and controlled by Mariah its affiliates and Investors will equal approximately 1,198 MW, or approximately 1.3% of the installed capacity in ERCOT or capable delivery into ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling 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 through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46006.

TRD-201602862
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2016

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCN) in Montgomery County.

Docket Style and Number: Application of Crystal Springs Water Company, Inc. to Amend Certificates of Convenience and Necessity in Montgomery County, Docket Number 46009.

The Application: On May 31, 2016, Crystal Springs Water Company, Inc. filed an application to amend water CCN No. 11373 and sewer CCN No. 20782, adding approximately 121 acres of service area and 0 current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46009.

TRD-201602844
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2016

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Notice of Petition for Adjustment to Support from Universal Service Plan

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on June 3, 2016.

Docket Style and Number: Annual Adjustment to Support the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to Public Utility Regulatory Act §56.032(d), Docket Number 45809.

The Application: The commission staff filed a petition for adjustment to support the Small and Rural Incumbent Local Exchange Company Universal Service Plan (the plan) to small and rural incumbent local exchange companies (SRILECs) pursuant to Public Utility Regulatory Act §56.032.

In *Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.032,* Docket Number 39643, Order (October 3, 2011), the commission established a procedure for calculation of the initial monthly support amounts from the plan. This docket is an annual update to the amounts established in Docket Number 39643 and the petition updates the amount of support for eligible SRILECs for the 12-month period following the 12-month period established in Docket Number 44489.

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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to file comments and the deadline to request to intervene is July 15, 2016. All correspondence should refer to Docket Number 45809.

TRD-201602861
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2016

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Rulemaking Regarding Emergency Response Service Request for Comment

In response to certain questions raised by the commissioners at the May 4, 2016, Open Meeting, commission staff has initiated a rulemaking proceeding to examine whether changes should be made to 16 Texas Administrative Code §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). Staff invites interested parties to comment in response to the following questions. 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 by Friday, July 15, 2016. All responses should reference Project No. 45927. ERCOT staff and Potomac Economics are requested to submit comments by Friday, July 29, 2016. Any questions should be directed to Mark Bryant *(mark.bryant@puc.texas.gov)*.

Market Design

(1) Is ERS a necessary or valuable service from an operational or reliability perspective?

(2) Would daily procurement of ERS on the day prior to the operating day be desirable?

(3) What changes in price paid for the service could be expected if it were procured on a daily basis?

(4) How does ERS differ from non-spin reserve service? Would it be desirable to simply eliminate ERS and buy more non-spin?

(5) Should the existing annual cost cap on ERS procurement and cost allocation methodology (based on risk factors assigned to time periods) be replaced by an hourly megawatt capacity requirement varying on a daily or seasonal basis?

(6) Should the price for ERS be indexed to the clearing price of one of the existing ancillary services or some other reference price?

Participation by Load and Distributed Generation Resources

(7) How would procurement of ERS on a daily basis affect participation by load and distributed generation resources in the service?

(8) What cost would be incurred by participants in the ERS program if ERS were procured on a daily basis?

(9) How would current performance criteria, testing requirements and availability metrics need to be revised if ERS were procured on a daily basis?

(10) How would demand response assets that currently are assigned to the alternate baseline be accommodated if ERS were procured on a daily basis?

General

(11) What other changes should be made to ERS to increase its value or to improve participation in the service?

TRD-201602875
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2016

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The Texas Department of Transportation (TxDOT) intends to engage qualified firms for professional services pursuant to Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT will solicit and receive qualification statements for obstruction surveys for multiple airports, to the current standards listed in Federal Aviation Administration (FAA) Advisory Circulars (AC) 150/5300-16, FAA AC 150/5300-17 and FAA AC 150/5300-18 and for LiDAR site surveys in support of airport project development.

TxDOT Project ID: 16OBSURVY

Project Description and Work to be Performed:

TxDOT intends to select one or two prime providers to perform obstruction and LiDAR site surveys for a five year period. The specific locations of the airports are not known at this time. Work will be performed within the 254 counties of the State of Texas.

Services to Be Provided By the Consultant:

The general services sought by TxDOT include all necessary professional engineering, surveying, planning and project management services related to the development and submission of the required aeronautical surveys into the FAA Airports GIS website. Additional services may include the collection and analysis of LiDAR surveys in support of preliminary project development efforts and/or existing obstruction evaluation using the FAA's evaluation and design surfaces.

The selected providers will develop work plans, complete ground surveys, collect aerial imagery, perform obstruction analysis, and deliver acceptable and compliant data and all materials via the FAA Airports GIS website as described in the most recent revisions of FAA Advisory Circulars 150/5300-16, 17 & 18. Surveys may include data needed for an Airport Layout Plan (ALP) or in support of new or improved instrument procedure development. LiDAR and all digital data collected and generated in support of preliminary project development and/or obstruction evaluation will be submitted directly to TxDOT.

Each obstruction and site survey and all submissions to FAA Airports GIS will be completed in a period of 120 days for each airport location, not inclusive of review times by the FAA, National Geodetic Survey, and TxDOT.

Procedure for Each Airport Location:

When a specific airport is assigned, TxDOT will initiate contract fee negotiations. While it is TxDOT's intent to award contracts under this solicitation, the selected providers shall have no cause of action based on the number of contracts, if any, issued. Contracts are expected to be awarded to the selected providers for a period of five years from the date the providers are notified of their selection under this solicitation. A DBE/HUB goal will be individually set for each contract awarded under this solicitation.

Qualification Statement Preparation Instructions:

Interested firms shall prepare a response to this solicitation on 8.5 x 11 white, portrait orientation paper with no less than 12 point font and 1 inch margins. Firms shall include a cover page listing the company's name, address, phone number and email address for the primary contact. The cover page shall also include the TxDOT Project ID 16OBSURVY. Responses shall be stapled and not bound in any other fashion. Cover letters including general transmittal letters will be removed and will not be shown to the selection committee. **If a prime provider submits more than one response, that provider will be disqualified.**

The responses will be rated and ranked according to the following criteria:

- No more than one typed page describing general qualifications of company including years of operation, types of surveys successfully completed, evidence of timely completion of projects, and other data pertinent to the company in general. **25 points**

- No more than three typed pages detailing staff who will be utilized under this project and their qualifications, certifications and experience. **20 points**

- No more than one typed page listing equipment owned or controlled (leased) by the company for use under this project. **10 points**

- No more than three typed pages describing the processes and methods being proposed to conduct the surveys and analysis under this project. **25 points**

- No more than **one typed page per bullet (20 points):**

- At least five references. TxDOT Aviation Division staff may not be used as references.

- No more than ten of the most recent completed surveys using the FAA's Airports GIS standard.

- No more than ten of the most recent completed surveys using ground based or aerial LiDAR for airport related site surveys.

Please note:

FIVE completed copies of the qualification statement **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th

Floor, South Tower, Austin, Texas 78704 no later than July 8, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope to the attention of Sheri Quinlan using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT - Aviation

150 East Riverside Drive

5th Floor, South Tower

Austin, Texas 78704

Selection will be made by a committee composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of a review of the qualification statements. The committee will review all qualification statements and rate and rank each. All firms will then be notified of the committee's decision. The selection committee reserves the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews. The committee reserves the right to reject any and all qualification statements and to conduct new professional services selection procedures.

If there are any technical or procedural questions, please email *AVN-RFQ@txdot.gov.* In the subject line reference Obstruction Survey Project ID 16OBSURVY.

TRD-201602877
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 7, 2016

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Dallas District Notice of Public Hearing

Department Policies Affecting Bicycle Use on the State Highway System

In accordance with Title 43, Texas Administrative Code, §25.55(b), the Texas Department of Transportation (TxDOT) - Dallas District is partnering with North Central Texas Council of Government (NCTCOG) to offer a public hearing on district transportation programs and policies affecting bicycle use on the state highway system. The public hearing will be held at the City of Richardson Civic Center, Grand Ballroom, 411 West Arapaho Road, Richardson, Texas 75080 on Tuesday, June 21, 2016, from 5:00 p.m. to 7:00 p.m.

The purpose of the public hearing is to provide information on the bicycle plans, policies, and programs for the TxDOT Dallas District and NCTCOG, and to receive public comment. Displays illustrating existing bike facilities and upcoming projects on the state system within the Dallas District will be available for viewing during an open house format beginning at 5:00 pm, with the formal presentation commencing at 6:00 p.m.

All interested persons are invited to attend this public hearing to obtain information about the district transportation programs and policies affecting bicycle use on the state highway system and to express their views. Persons requiring special communication or accommodation needs should contact the **TxDOT Dallas District Public Information Officer at (214) 320-6100** at least two (2) working days prior to the public hearing. Because the public hearing will be conducted in English, any request for language interpreters or other special communication needs should also be made at least two (2) working days prior to the public hearing. Every reasonable effort to accommodate these needs will be made.

All interested persons are invited to attend this public hearing. Verbal and written comments from the public regarding the district transportation programs and policies affecting bicycle use on the state highway system are encouraged and may be presented for a period of 10 calendar days following the hearing. Written comments may be submitted either in person or by mail to the TxDOT Dallas District - Advance Project Development, 4777 East Highway 80, Mesquite, Texas 75150-6643, Attn: Sandra J. Williams. All written comments must be **postmarked on or before Friday, July 1, 2016** to be included in the official public hearing record.

For additional information, please contact Ms. Sandra Williams, TxDOT Dallas District, via phone at (214) 320-6686, or e-mail *Sandra.Williams2@txdot.gov.*

TRD-201602856
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 6, 2016

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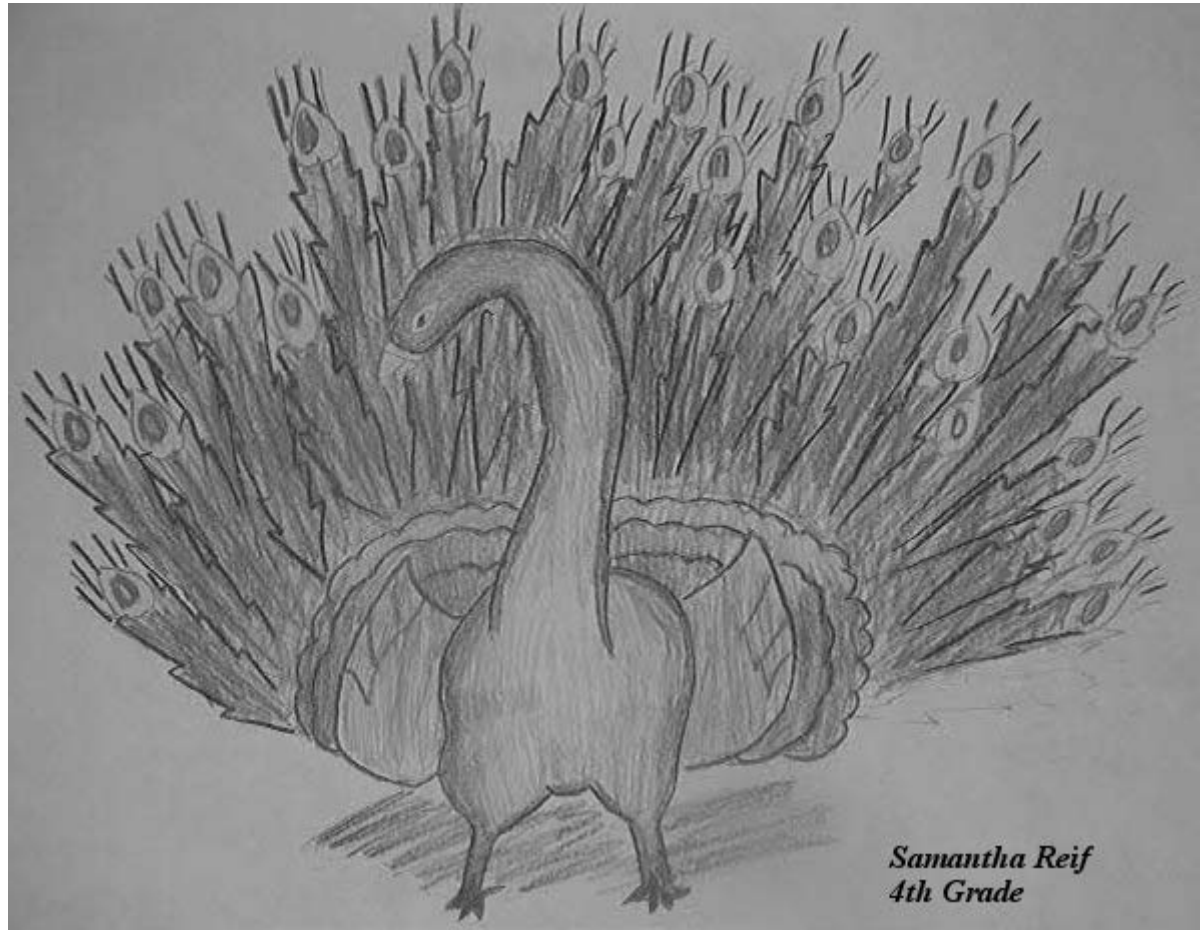
Samantha Reif
4th Grade

How to Use the Texas Register

Information Available: The 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.

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.

Review of Agency Rules - notices of state agency rules review.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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
1 TAC §91.1…….....950 *(P)*

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