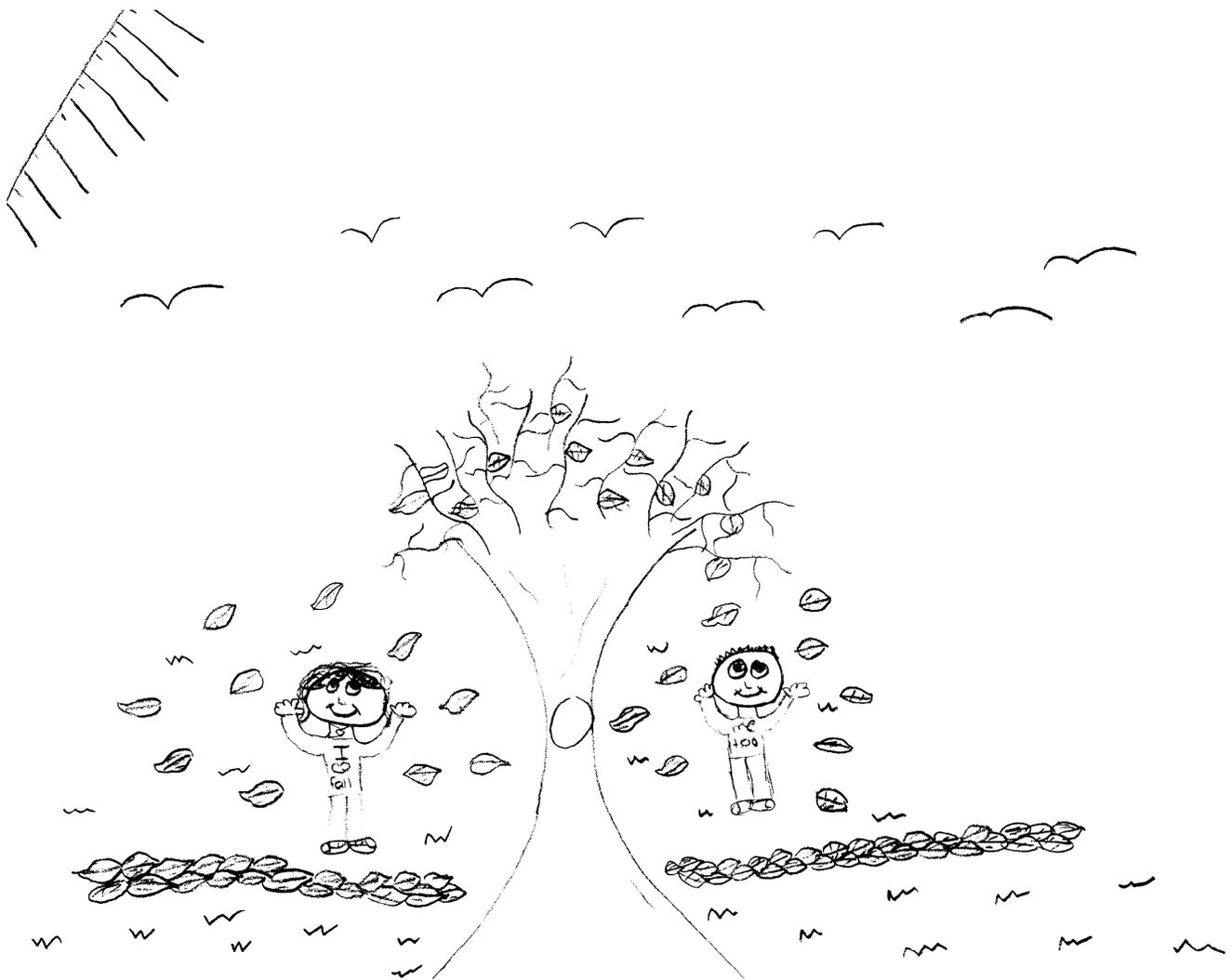

TEXAS REGISTER

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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 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-0131-KP

Requestor:

The Honorable Jerry D. Rochelle
Bowie County Criminal District Attorney
601 Main
Texarkana, Texas 75504

Re: The effect of a conviction in another state, and a subsequent restoration of rights by the other state, on an individual's ability to run for or hold public office in Texas (RQ-0131-KP).

Briefs requested by November 3, 2016.

RQ-0132-KP

Requestor:

The Honorable Martin Placke
Lee County Attorney
200 South Main, Room 305
Giddings, Texas 78942

Re: Which type of bond is required of a county attorney who also performs the functions of a district attorney (RQ-0132-KP).

Briefs requested by November 3, 2016.

RQ-0133-KP

Requestor:

The Honorable Charles Schwertner
Chair, Committee on Health and Human Services
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068
The Honorable Joan Huffman
Chair, Committee on State Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether doctors of osteopathy are authorized to issue certificates of medical examination and other relevant documents under chapter 574 of the Health and Safety Code (RQ-0133-KP).

Briefs requested by October 27, 2016.

Briefs requested by November 3, 2016.

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

TRD-201605203
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 10, 2016



Opinions

Opinion No. KP-0116

The Honorable Billy W. Byrd
Upshur County Criminal District Attorney
405 North Titus Street
Gilmer, Texas 75644

Re: Whether a county commissioners court has authority to expend county funds on holiday decorations and county literacy programs (RQ-0105-KP).

S U M M A R Y

Under §381.004 of the Local Government Code, a commissioners court may expend county funds on holiday lights and decorations on county buildings and facilities, and may expend county funds to contract with or donate to a local county literacy program, to the extent that such expenditures serve purposes specified in the statute. Whether a particular expenditure serves a purpose specified in §381.004 and meets the requirements of article III, section 52(a) of the Texas Constitution is for the commissioners court to determine in the first instance, subject to judicial review. A court would likely conclude that such a holiday light display is not a violation of the Establishment Clause.

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

TRD-201605215

Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 11, 2016



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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.507

The Public Utility Commission of Texas (commission) proposes amendment to §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). The proposed amendment will enable the deployment of ERS to help prevent or mitigate involuntary load curtailment by ERCOT in the event of actual or anticipated localized transmission congestion, and will excuse an ERS participant from ERS contractual obligations in order to permit that participant to serve as an alternative to a reliability-must-run agreement. Project Number 45927 is assigned to this proceeding.

Mark Bryant, Senior Economist, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Bryant has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a reduced likelihood of involuntary load curtailment due to localized transmission congestion and potential cost savings in the procurement of MRA resources. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on November 30, 2016. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45927.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.151, which provides the commission with the authority to oversee ERCOT.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).

(a) (No change.)

(b) ERS procurement. ERCOT shall procure ERS, a special emergency response service that is intended to be deployed by ERCOT in an Energy Emergency Alert (EEA) event, or to forestall or mitigate involuntary load curtailment in the event of actual or anticipated localized transmission congestion.

(1) (No change.)

(2) ERCOT may spend a maximum of \$50 million per calendar year on ERS. ERCOT may determine cost limits for each ERS contract period in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an ERS deployment event [EEA] during the preceding ERS contract period.

(c) (No change.)

(d) Participation in ERS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of ERS:

(1) - (9) (No change.)

(10) If, during an ERS contract period, the owner of a participating ERS resource enters into an agreement with ERCOT under which the resource serves as an alternative to a reliability-must-run

(RMR) resource, the ERS resource's obligation shall be extinguished on the effective date of the agreement for the remainder of the contract period for all hours in any ERS time period that coincides in part or in whole with any hours for which the resource is obligated to provide service as an RMR alternative. The QSE representing the resource shall receive no payment for that resource for such ERS time periods for the remainder of the ERS contract period. Any ERS resource or group of sites in an ERS resource that is obligated to provide ERS for the purpose of addressing local congestion, or that has offered to provide such ERS, may not be offered to provide service as an RMR alternative for any hours in which the resource is already obligated to provide ERS.

(e) - (i) (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 October 10, 2016.

TRD-201605140

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 20, 2016

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



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 140. ORTHOTICS AND PROSTHETICS

16 TAC §§140.1 - 140.31

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 140, §§140.1 - 140.31, regarding the Orthotics and Prosthetics program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Orthotics and Prosthetics program located at 16 TAC Chapter 114. The Commission's rules were effective October 1, 2016. (41 TexReg 4467). The Department officially commenced all regulatory functions for the Orthotics and Prosthetics program on October 3, 2016.

The current 16 TAC Chapter 140 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 821. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of §§140.1 - 140.31 eliminates industry and public confusion by removing duplicate rules for the Orthotics and Prosthetics program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Orthotics and Prosthetics program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposal.

§140.1. *Introduction.*

§140.2. *Definitions.*

§140.3. *Operation of the Board.*

§140.4. *Fees.*

§140.5. *General Application Procedures.*

§140.6. *General Licensing Procedures.*

§140.7. *Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.*

§140.8. *Acquiring Professional Licensure as a Uniquely Qualified Person.*

§140.9. *Licensing by Examination.*

§140.10. *Assistant License.*

§140.11. *Technician Registration.*

§140.12. *Temporary License.*

§140.13. *Student Registration.*

§140.14. *Upgrading a Student Registration.*

- §140.15. *Accreditation of Prosthetic and Orthotic Facilities.*
- §140.16. *Standards, Guidelines, and Procedures for a Professional Clinical Residency.*
- §140.17. *License Renewal.*
- §140.18. *Continuing Education.*
- §140.19. *Change of Name and Address.*
- §140.20. *Complaints.*
- §140.21. *Professional Standard and Disciplinary Provisions.*
- §140.22. *Licensing Persons with Criminal Backgrounds.*
- §140.23. *Default Orders.*
- §140.24. *Surrender of License.*
- §140.25. *Suspension of License under the Family Code.*
- §140.26. *Civil Penalty.*
- §140.27. *Program Accessibility.*
- §140.28. *Consumer Notification.*
- §140.29. *Petition for the Adoption of a Rule.*
- §140.30. *Criminal History Evaluation Letter.*
- §140.31. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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 October 10, 2016.

TRD-201605141

Brian E. Francis

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 20, 2016

For further information, please call: (512) 463-8179



CHAPTER 141. DIETITIANS

SUBCHAPTER A. LICENSED DIETITIANS

16 TAC §§141.1 - 141.22

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 141, Subchapter A, §§141.1 - 141.22, regarding the Dietitians program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Dietitians program located at 16 TAC Chapter 116. The Commission's rules were effective October 1, 2016. (41 TexReg 4481). The Department officially commenced all regulatory functions for the Dietitians program on October 3, 2016.

The current 16 TAC Chapter 141 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 711. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§141.1 - 141.22 eliminates industry and public confusion by removing duplicate and inactive rules for the Dietitians program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Dietitians program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§141.1. *Definitions.*

§141.2. *The Board's Operation.*

§141.3. *Fees.*

§141.4. *The Profession of Dietetics and Code of Ethics.*

§141.5. *Academic Requirements for Licensure.*

§141.6. *Preplanned Professional Experience Requirements for Licensure.*

§141.7. *Examination for Dietitian Licensure.*

§141.8. *Application Procedures.*

§141.9. *Determination of Eligibility for Licensure.*

§141.10. *Provisional Licensed Dietitians.*

§141.11. *Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training.*

§141.12. *Licensing.*

- §141.13. *Temporary License.*
- §141.14. *Changes of Name or Address.*
- §141.15. *License Renewal.*
- §141.16. *Continuing Education Requirements.*
- §141.17. *Licensing of Persons with Criminal Convictions.*
- §141.18. *Violations, Complaints and Subsequent Board Actions.*
- §141.19. *Formal Hearings.*
- §141.20. *Informal Disposition.*
- §141.21. *Default Orders.*
- §141.22. *License Suspension or Denial Relating to Child Support and Child Custody.*

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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Brian E. Francis
Executive Director

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For further information, please call: (512) 463-8179



CHAPTER 142. ATHLETIC TRAINERS SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

16 TAC §§142.1 - 142.20

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 142, Subchapter A, §§142.1 - 142.20, regarding the Athletic Trainers program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Athletic Trainers program located at 16 TAC Chapter 110. The Commission's rules were effective October 1, 2016. (41 TexReg 4435). The Department officially commenced all regulatory functions for the Athletic Trainers program on October 3, 2016.

The current 16 TAC Chapter 142 rules were transferred from DSHS to be repealed to eliminate industry and public confusion.

(41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 871. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§142.1-142.20 eliminates industry and public confusion by removing duplicate and inactive rules for the Athletic Trainers program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Athletic Trainers program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposal.

- §142.1. *Definitions.*
- §142.2. *Scope of Practice.*
- §142.3. *The Board's Operation.*
- §142.4. *Petition for Rulemaking.*
- §142.5. *Processing Applications.*
- §142.6. *Fees.*
- §142.7. *Qualifications.*
- §142.8. *Student Athletic Trainer Activities.*
- §142.9. *Examination for Licensure.*
- §142.10. *Temporary License.*
- §142.11. *License Renewal.*
- §142.12. *Continuing Education Requirements.*
- §142.13. *Standards for Conduct.*
- §142.14. *Violations, Complaints and Disciplinary Actions.*
- §142.15. *Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.*
- §142.16. *Formal Hearings.*
- §142.17. *Suspension of License Relating to Child Support and Child Custody.*

§142.18. *Administrative Penalties.*

§142.19. *Request for Criminal History Evaluation Letter.*

§142.20. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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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Brian E. Francis

Executive Director

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CHAPTER 143. MIDWIFERY

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 143, Subchapter A, §§143.1 - 143.4 and 143.7; Subchapter B, §§143.11 - 143.17 and 143.20 - 143.25; Subchapter C, §§143.31 - 143.37, and 143.40; Subchapter D, §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, and 143.141; and Subchapter E, §§143.161 - 143.174, regarding the Midwives program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Midwives program located at 16 TAC Chapter 115. The Commission's rules were effective October 1, 2016. (41 TexReg 4477). The Department officially commenced all regulatory functions for the Midwives program on October 3, 2016.

The current 16 TAC Chapter 143 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 831. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §§143.1 - 143.4 and 143.7 eliminates industry and public confusion by removing duplicate and inactive rules for the Midwives program.

The proposed repeal of Subchapter B, §§143.11 - 143.17 and §§143.20 - 143.25 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter C, §§143.31 - 143.37, and §143.40 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter D, §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, and 143.141 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

The proposed repeal of Subchapter E, §§143.161 - 143.174 eliminates industry and public confusion by removing duplicate rules for the Midwives program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Midwives program in chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. THE BOARD

16 TAC §§143.1 - 143.4, 143.7

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

§143.1. *Introduction.*

§143.2. *Definitions.*

§143.3. *Midwifery Board.*

§143.4. *Board Member Training.*

§143.7. *Petition for the Adoption of a Rule.*

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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Executive Director

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SUBCHAPTER B. LICENSURE

16 TAC §§143.11 - 143.17, 143.20 - 143.25

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

- §143.11. *License Required.*
- §143.12. *Fees.*
- §143.13. *Initial Application for Licensure.*
- §143.14. *License Renewal.*
- §143.15. *Late Renewal.*
- §143.16. *Renewal for Retired Midwives Performing Charity Work.*
- §143.17. *State Roster of Licensed Midwives.*
- §143.20. *Grounds for Denial of Application or Disciplinary Action.*
- §143.21. *Application or Renewal with Criminal Conviction.*
- §143.22. *License Surrender.*
- §143.23. *Application for a New License after Revocation, Suspension, or Surrender.*
- §143.24. *Request for a Criminal History Evaluation Letter.*
- §143.25. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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. EDUCATION AND EXAMINATION

16 TAC §§143.31 - 143.37, 143.40

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

- §143.31. *Education Committee.*
- §143.32. *Basic Midwifery Education.*
- §143.33. *Education Course Approval.*
- §143.34. *Education Course Denial or Revocation of Approval.*
- §143.35. *Exam Approval, Denial, or Revocation of Approval.*
- §143.36. *Complaints Concerning Education Courses and Comprehensive Exams.*
- §143.37. *Jurisprudence Examination.*
- §143.40. *Continuing Education.*

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. PRACTICE OF MIDWIFERY

16 TAC §§143.51, 143.52, 143.57, 143.58, 143.60, 143.65, 143.70, 143.75, 143.101, 143.111, 143.121, 143.131, 143.141

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

- §143.51. *Standards for the Practice of Midwifery in Texas.*
- §143.52. *Inter-professional Care.*
- §143.57. *Termination of the Midwife-Client Relationship.*
- §143.58. *Transfer of Care in An Emergency Situation.*
- §143.60. *Prenatal Care.*
- §143.65. *Labor and Delivery.*
- §143.70. *Postpartum Care.*
- §143.75. *Newborn Care During the First Six Weeks After Birth.*
- §143.101. *Administration of Oxygen.*
- §143.111. *Eye Prophylaxis.*
- §143.121. *Newborn Screening.*
- §143.131. *Informed Choice and Disclosure Statement.*
- §143.141. *Provision of Support 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.

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For further information, please call: (512) 463-8179



SUBCHAPTER E. COMPLAINT REVIEW

16 TAC §§143.161 - 143.174

The repeal is proposed 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

- §143.161. *Complaint Review Committee.*
- §143.162. *Reporting Violations and/or Complaints.*
- §143.163. *Records of Complaints.*
- §143.164. *Complaint Categories.*
- §143.165. *Disciplinary Action and Guidelines.*
- §143.166. *Complaint Investigation.*
- §143.167. *Informal Settlement Conferences.*
- §143.168. *Formal Hearings.*
- §143.169. *Disciplinary Action.*
- §143.170. *Complaint Disposition and Appeals.*
- §143.171. *Refunds.*
- §143.172. *Cease and Desist Order.*
- §143.173. *Emergency Suspension.*
- §143.174. *Default Orders.*

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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Brian E. Francis
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For further information, please call: (512) 463-8179



CHAPTER 144. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §§144.1 - 144.31

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 144, §§144.1 - 144.31, regarding the Hearing Instrument Fitters and Dispensers program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Hearing Instrument Fitters and Dispensers program located at 16 TAC Chapter 112. The Commission's rules were effective October 1, 2016. (41 TexReg 4458). The Department officially commenced all regulatory functions for the Hearing Instrument Fitters and Dispensers program on October 3, 2016.

The current 16 TAC Chapter 144 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 141. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of §§144.1 - 144.31 eliminates industry and public confusion by removing duplicate and inactive rules for the Hearing Instrument Fitters and Dispensers program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Hearing Instrument Fitters and Dispensers program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, Chapters 51, 402 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 402 and 401 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §144.1. *Purpose.*
- §144.2. *Definitions.*
- §144.3. *The Committee.*
- §144.4. *Licensees and the Committee.*
- §144.5. *Consumer Information and Display of License.*
- §144.6. *Application Procedures.*
- §144.7. *Processing Procedures.*
- §144.8. *Issuance of Permits.*
- §144.9. *Issuance of Licenses.*
- §144.10. *Application By License Holder From Another State.*
- §144.11. *Filing of Bond.*
- §144.12. *Surrender of a License or Permit.*
- §144.13. *Renewal of License.*
- §144.14. *Continuing Education Requirements.*
- §144.15. *Examination.*
- §144.16. *Conditions of Sales.*
- §144.17. *Complaints and Violations.*
- §144.18. *Formal Hearings.*
- §144.19. *Administrative Penalties.*
- §144.20. *Informal Disposition.*
- §144.21. *Suspension of License Relating to Child Support and Child Custody Orders.*
- §144.22. *Code of Ethics.*
- §144.23. *Relevant Factors.*
- §144.24. *Severity Level and Sanction Guide.*
- §144.25. *Request for Criminal History Evaluation Letter.*
- §144.26. *Criminal History Record Information Requirement for License or Permit Issuance.*
- §144.27. *Criminal History Record Information Requirement for License Renewal.*
- §144.28. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*
- §144.29. *Joint Rule Regarding the Sale of Hearing Instruments.*
- §144.30. *Joint Rule Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.*
- §144.31. *Petition for Adoption of a Rule.*

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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Brian E. Francis
Executive Director

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CHAPTER 145. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 145, Subchapter A, §145.1;

Subchapter B, §§145.11 - 145.15; Subchapter C, §§145.31 - 145.33; Subchapter D, §§145.41 - 145.45; Subchapter E, §§145.61 - 145.66; Subchapter F, §§145.81 - 145.86; Subchapter G, §145.91; Subchapter H, §§145.101 - 145.104; Subchapter I, §145.111 and §145.112; Subchapter J, §145.121 and §145.122; Subchapter K, §145.141 and §145.142; Subchapter L, §§145.161 - 145.165; Subchapter M, §145.181 and §145.182; Subchapter N, §§145.191 - 145.204; Subchapter O, §§145.211 - 145.216; Subchapter P, §§145.231 - 145.233, regarding the Speech-Language Pathologists and Audiologists program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On April 13, 2016, the Commission adopted its own set of rules for the Speech-Language Pathologists and Audiologists program located at 16 TAC Chapter 111. The Commission's rules were effective October 1, 2016. (41 TexReg 4441). The Department officially commenced all regulatory functions for the Speech-Language Pathologists and Audiologists program on October 3, 2016.

The current 16 TAC Chapter 145 rules were transferred from DSHS to be repealed to eliminate industry and public confusion. (41 TexReg 7585). These rules were formerly located at 22 TAC Chapter 741. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter A, §145.1 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter B, §§145.11 - 145.15 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter C, §§145.31 - 145.33 eliminates industry and public confusion by removing duplicate and inactive rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter D, §§145.41 - 145.45 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter E, §§145.61 - 145.66 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter F, §§145.81 - 145.86 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter G, §145.91 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter H, §§145.101 - 145.104 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter I, §145.111 and §145.112 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter J, §145.121 and §145.122 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter K, §145.141 and §145.142 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter L, §§145.161 - 145.165 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter M, §145.181 and §145.182 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter N, §§145.191 - 145.204 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter O, §§145.211 - 145.216 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

The proposed repeal of Subchapter P, §§145.231 - 145.233 eliminates industry and public confusion by removing duplicate rules for the Speech-Language Pathologists and Audiologists program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect there will be no direct cost to state or local government. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit by the elimination of confusion that would result that would result from the location of two sets of rules for the Speech-Language Pathologists and Audiologists in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

16 TAC §145.1

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.1. Definitions.

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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Brian E. Francis
Executive Director

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For further information, please call: (512) 463-8179



SUBCHAPTER B. THE BOARD

16 TAC §§145.11 - 145.15

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.11. Officers.

§145.12. Committees.

§145.13. Transaction of Official Business.

§145.14. Petition for Adoption of a Rule.

§145.15. Impartiality and Nondiscrimination.

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. SCREENING PROCEDURES

16 TAC §§145.31 - 145.33

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.31. *Communication Screening.*

§145.32. *Hearing Screening.*

§145.33. *Newborn Hearing Screening.*

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. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

16 TAC §§145.41 - 145.45

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.41. *Professional Responsibilities of License Holders.*

§145.42. *Advertising.*

§145.43. *Recordkeeping and Billing.*

§145.44. *Requirements, Duties, and Responsibilities of Supervisors.*

§145.45. *Consumer Information and Display of License.*

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 FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

16 TAC §§145.61 - 145.66

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.61. *Requirements for a Speech-Language Pathology License.*

§145.62. *Requirements for an Intern in Speech-Language Pathology License.*

§145.63. *Waiver of Clinical and Examination Requirements for Speech-Language Pathologists.*

§145.64. *Requirements for an Assistant in Speech-Language Pathology License.*

§145.65. *Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.*

§145.66. *Licensing in Speech-Language Pathology for Military Service Members, Military Veterans, and Military Spouses.*

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 F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

16 TAC §§145.81 - 145.86

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §145.81. *Requirements for an Audiology License.*
- §145.82. *Requirements for an Intern in Audiology License.*
- §145.83. *Waiver of Clinical and Examination Requirements for Audiologists.*
- §145.84. *Requirements for an Assistant in Audiology License.*
- §145.85. *Requirements for a Temporary Certificate of Registration in Audiology.*
- §145.86. *Licensing in Audiology for Military Service Members, Military Veterans, and Military Spouses.*

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 G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

16 TAC §145.91

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.91. *Requirements for Dual Licenses in Speech-Language Pathology and Audiology.*

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 H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §§145.101 - 145.104

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

- §145.101. *Registration of Audiologists and Interns in Audiology to Fit and Dispense Instruments.*
- §145.102. *General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.*
- §145.103. *Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.*
- §145.104. *Joint Rule Regarding the Sale of Hearing Instruments.*

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 I. APPLICATION PROCEDURES

16 TAC §145.111, §145.112

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.111. *Application Process.*

§145.112. *Required Application Materials.*

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 J. LICENSURE EXAMINATIONS

16 TAC §145.121, §145.122

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.121. *Examination Administration.*

§145.122. *Jurisprudence Examination.*

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 K. ISSUANCE OF LICENSE

16 TAC §145.141, §145.142

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.141. *Issuance of License.*

§145.142. *Criminal History Record Information Requirement for License Issuance.*

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 L. LICENSE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION

16 TAC §§145.161 - 145.165

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.161. *Renewal Procedures.*

§145.162. *Requirements for Continuing Professional Education.*

§145.163. *Criminal History Record Information Requirement for License Renewal.*

§145.164. *Late Renewal of a License.*

§145.165. *Renewal of Licensee on Active Military Duty.*

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 M. FEES AND PROCESSING PROCEDURES

16 TAC §145.181, §145.182

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.181. *Schedule of Fees.*

§145.182. *Time Periods For Processing Applications and Renewals.*

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 N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

16 TAC §§145.191 - 145.204

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.191. *Complaint Procedures.*

§145.192. *Disciplinary Action; Notices.*

§145.193. *Revocation, Suspension, Emergency Suspension, or Denial.*

§145.194. *Informal Disposition.*

§145.195. *Formal Hearings; Surrender of License.*

§145.196. *Default Orders.*

§145.197. *Monitoring of Licensees.*

§145.198. *Administrative Penalties.*

§145.199. *Schedule of Sanctions.*

§145.200. *Licensing of Persons with Criminal Convictions.*

§145.201. *Suspension of License Relating to Child Support and Child Custody.*

§145.202. *Request for Criminal History Evaluation Letter.*

§145.203. *Board Ordered Refund.*

§145.204. *Cease and Desist Order.*

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 O. TELEHEALTH

16 TAC §§145.211 - 145.216

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.211. *Definitions Relating to Telehealth.*

§145.212. *Service Delivery Models of Speech-Language Pathologists.*

§145.213. *Requirements for the Use of Telehealth by Speech-Language Pathologists.*

§145.214. *Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.*

§145.215. *Requirements for Providing Telehealth Services in Speech-Language Pathology.*

§145.216. *Requirements for Providing Telepractice Service in Audiology.*

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 P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §§145.231 - 145.233

The repeal is proposed under Texas Occupations Code, Chapters 51, 401 and 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 401 and 402 as applicable. No other statutes, articles, or codes are affected by the proposal.

§145.231. *Purpose.*

§145.232. *Definitions.*

§145.233. *Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.*

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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Brian E. Francis

Executive Director

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CHAPTER 146. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS SUBCHAPTER K. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS

16 TAC §§146.575 - 146.596

The Texas Department of Licensing and Regulation (Department) proposes the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 146, Subchapter K, §§146.575 - 146.596, regarding the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program.

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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs were transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

On March 9, 2016, the Commission adopted its own set of rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program located at 16 TAC Chapter 120. Part of the Commission's rules were effective April 15, 2016, and the remaining sections were effective October 1, 2016. (41 TexReg 2476). The Department officially commenced all regulatory functions for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program on October 3, 2016.

The current 16 TAC Chapter 146 rules were transferred from DSHS to be repealed to eliminate industry and public confusion.

(41 TexReg 7585). These rules were formerly located at 25 TAC Chapter 140. The proposed repeal is necessary to complete the implementation of S.B. 202.

The proposed repeal of Subchapter K, §§146.575 - 146.596 eliminates industry and public confusion by removing duplicate and inactive rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program.

Brian E. Francis, Executive Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no direct cost to state or local government related to the repeal. There is no estimated increase or decrease in revenue to the state as a result of the proposed repeal.

Mr. Francis also has determined that for each year of the first five-year period the proposed repeal of the rules is in effect, the public will benefit from the elimination of confusion that would result from the location of two sets of rules for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program in Chapter 16 of the Texas Administrative Code.

The proposed rule repeal has no anticipated economic effect on small and micro-businesses and the repeal requires no compliance by any persons.

Since the agency has determined that the proposed repealed rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, Chapters 51 and 403, 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the proposal.

§146.575. *Introduction.*

§146.576. *Definitions.*

§146.577. *Fees.*

§146.578. *Petition for Rulemaking.*

§146.579. *Dyslexia Licensing Advisory Committee.*

§146.580. *Application Requirements and Procedures.*

§146.581. *Application Processing.*

§146.582. *Qualifications for Licensure as a Dyslexia Therapist.*

§146.583. *Qualifications for Licensure as a Dyslexia Practitioner.*

§146.584. *Requirements for Training Programs and Qualified Instructors.*

§146.585. *Examination for Licensure.*

§146.586. *Code of Ethics; Duties and Responsibilities of License Holders.*

§146.587. *Renewal of License.*

§146.588. *Changes of Name or Address.*

§146.589. *Continuing Education Requirements.*

§146.590. *Filing Complaints and Complaint Investigations.*

- §146.591. *Disciplinary Action.*
- §146.592. *Informal Disposition.*
- §146.593. *Formal Hearings.*
- §146.594. *Schedule of Sanctions.*
- §146.595. *Licensing of Persons with Criminal Backgrounds.*
- §146.596. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

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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 Executive Director
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 27. FIELDS OF STUDY SUBCHAPTER I. COMPUTER SCIENCE/INFORMATION TECHNOLOGY FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.261 - 27.267

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.261 - 27.267, concerning Computer Science/Information Technology Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a computer science/information technology field of study. The newly added rules will affect students when the computer science/information technology field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a computer science/information technology degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWcomments@THECB.state.tx.us.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.261. Authority and Specific Purposes of the Computer Science/Information Technology Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Computer Science/Information Technology Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Computer Science/Information Technology Field of Study Curricula.

§27.262. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8)

§27.263. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.264. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, §2110.008. It may be reestablished by the Board.

§27.265. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.266. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Computer Science/Information Technology Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Computer Science/Information Technology Field of Study Curricula; and

(3) Any other issues related to the Computer Science/Information Technology Field of Study Curricula as determined by the Board.

§27.267. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



SUBCHAPTER J. CRIMINAL JUSTICE FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.281 - 27.287

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.281 - 27.287, concerning Criminal Justice Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Criminal Justice field of study. The newly added rules will affect students when the criminal justice field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce has determined that for the first five years there

will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a criminal justice degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWcomments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.281. Authority and Specific Purposes of the Criminal Justice Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Criminal Justice Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the criminal justice field of study curricula.

§27.282. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.283. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution

of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.284. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.285. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.286. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Criminal Justice Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Criminal Justice Field of Study Curricula; and

(3) Any other issues related to the Criminal Justice Field of Study Curricula as determined by the Board.

§27.287. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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 October 10, 2016.

TRD-201605154

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 20, 2016

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



SUBCHAPTER K. PERFORMING ARTS/DRAMA FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.301 - 27.307

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§27.301 - 27.307, concerning Performing Arts/Drama Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Performing Arts/Drama field of study. The newly added rules will affect students when the criminal justice field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a performing arts/drama degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWcomments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.301. Authority and Specific Purposes of the Performing Arts/Drama Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Performing Arts/Drama Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the performing arts/drama field of study curricula.

§27.302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the

degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.303. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.304. Duration.

The Committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.305. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.306. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Performing Arts/Drama Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Performing Arts/Drama Field of Study Curricula; and

(3) Any other issues related to the Performing Arts/Drama Field of Study Curricula as determined by the Board.

§27.307. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its

evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes an amendment to §61.1011, concerning school finance. The section establishes in rule the definitions, assumptions, and calculations used in determining a district's Additional State Aid for Tax Reduction (ASATR). The proposed amendment would enable a school district receiving a reduced local share of Foundation School Program funding as a result of being combined with an academically unacceptable school district to receive the entire benefit of the adjustment rather than having it reduced by the ASATR calculation.

The Texas Education Code (TEC), §42.2516, allows school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under the TEC, §42.2516, details the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money is needed or if the state and local revenue received through formula funding is sufficient so that hold harmless money is not needed. Since the annexation of an academically unacceptable school district under the TEC, §13.054, rarely occurs, neither the TEC, §42.2516, nor §61.1011 address the impact on the ASATR calculation of the state assistance provided under the TEC, §13.054(f), which requires the commissioner to annually adjust the local fund assignment for a district to which territory of an academically unacceptable district is annexed.

Because of the recent annexation of an academically unacceptable school district, the TEA has determined that §61.1011 should be modified to ensure the extra state aid under the TEC, §13.054(f), is not reduced by a reduction to the ASATR calculation. The proposed amendment would add language to subsection (b)(5)(C) to describe the calculation adjustment for districts entitled to the state assistance provided under the TEC, §13.054(f).

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect, there will be fiscal implications for state and local government as a result of the proposed amendment. For fiscal year (FY) 2017, the anticipated cost to TEA is \$12,489,972. One school district, Texas City Independent School District (ISD), will be eligible for the adjusted state aid and will receive \$12,489,972 in additional funding in FY 2017. There are no anticipated costs or benefits beyond FY 2017.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be allowing the TEA to provide Texas City ISD, which has been consolidated with an academically unacceptable school district for school year 2016-2017, with the full amount of the state aid intended under the TEC, §13.054(f). This would enable Texas City ISD to complete renovations to facilities and modifications to educational programs to benefit the students in the formerly academically unacceptable district. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins October 21, 2016, and ends November 21, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 21, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §42.2516, which provides for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. TEC, §42.2516(g), authorizes the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.2516.

§61.1011. *Additional State Aid for Tax Reduction (ASATR).*

(a) (No change.)

(b) Additional State Aid for Tax Reduction (ASATR). A school district may be entitled to receive ASATR under the TEC, §42.2516(b). The entitlement to ASATR for a given fiscal year is determined by calculating the minimum revenue entitlement applicable

to that fiscal year and comparing the minimum revenue entitlement to the total state and local formula revenue based on the CTR for that fiscal year.

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

(5) Fiscal year 2011-2012 and subsequent fiscal years. Minimum revenue; adjusted minimum revenue; state and local revenue (S4); and ASATR are calculated as follows for the 2011-2012 fiscal year and each subsequent fiscal year.

(A) - (B) (No change.)

(C) State and local revenue (S4) for the applicable year is calculated as follows [by adding Tier 1 state aid for that year to M&O tax collections at the CTR for that year and then subtracting from that sum recapture at the CTR for that year] .

(i) State and local revenue (S4) for the applicable year is calculated by adding Tier 1 state aid for that year to M&O tax collections at the CTR for that year and then subtracting from that sum recapture at the CTR for that year.

(ii) For the 2016-2017 fiscal year, the sum described by paragraph (5)(C)(i) of this subsection is adjusted for districts receiving an adjustment to the local fund assignment (LFA) under the TEC, §13.054(f), by subtracting the amount of additional Tier 1 state aid that results from the adjustment to the LFA from the Tier 1 state aid amount used in the calculation of state and local revenue (S4) for the applicable year.

(D) - (F) (No change.)

(c) - (d) (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 October 10, 2016.

TRD-201605163

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.574

The Comptroller of Public Accounts proposes new §3.574, concerning margin: new veteran-owned businesses.

This section implements Senate Bill 1049, 84th Legislature, 2015, effective January 1, 2016, which amended Tax Code, Chapter 171, to provide that qualifying new veteran-owned businesses are not subject to the franchise tax during an initial 5-year period of operation in Texas.

Throughout the section, the comptroller interprets the phrase "begins doing business in Texas" as used in SB 1049 to mean the date a new veteran-owned business is chartered, organized, or otherwise formed in Texas. As defined in SB 1049, a new veteran-owned business must be a Texas entity. Interpreting its formation date as the date a new veteran-owned business "begins doing business in Texas" is consistent with the imposition of franchise tax on all Texas entities from the date of formation. This interpretation is also consistent with the SB 1049 provision that allows for a 5-year waiver of fees collected by the Secretary of State for new veteran-owned businesses based on the entity's date of formation. Further, this interpretation provides a clear and unambiguous beginning date for new veteran-owned businesses that will make it easier for the owners to comply with their franchise tax obligations.

Subsection (a) provides the effective date of the provisions in this section as established in SB 1049.

Subsection (b) provides definitions for certain terms used throughout the section. Paragraph (1) defines the term "beginning date" for a taxable entity that qualifies as a new veteran-owned business as the fifth anniversary of the date the entity is chartered, organized, or otherwise formed in Texas or the date the entity ceases to qualify as a new veteran-owned business. Paragraph (1) also includes an example for illustration. Paragraph (2) defines "Letter of Verification of Veteran's Honorable Discharge." This is the written verification Texas Veterans Commission issues to a veteran, under Tax Code, §171.0005(b), for the comptroller to verify the veteran's discharge status. Paragraph (3) defines the term "new business" and is taken from the definition of the term "new veteran-owned business" in Tax Code, §171.0005, with changes. The statutory definition of new business only requires that a qualifying business begins doing business in Texas on or after January 1, 2016; however, SB 1049 also provides that this statutory provision expires effective January 1, 2020. The comptroller's definition of new business, therefore, requires that a qualifying business is chartered, organized, or otherwise formed in Texas on or after January 1, 2016, and before January 1, 2020. Paragraph (4) defines the term "new veteran-owned business" and is taken directly from Tax Code, §171.0005.

Subsection (c) provides that the franchise tax is not imposed on a qualifying new veteran-owned business for an initial five-year period provided that the business continues to qualify as a new veteran-owned business during that period.

Subsection (d) requires a qualifying new veteran-owned business to verify that all of the owners of its business are qualifying veterans. Paragraph (1) lists the documents required for verification. Paragraph (2) specifies when a taxable entity must submit the required documents to the secretary of state and when a taxable entity must submit the required documents to the comptroller.

Subsection (e) provides the reporting requirements for a qualifying new veteran-owned business. A taxable entity that meets all the qualifications of a new veteran-owned business is required to file a No Tax Due Report for each reporting period that the franchise tax is not imposed on the taxable entity to verify that the entity continues to qualify as a new veteran-owned business. The comptroller is authorized to require this information under Tax Code, §171.204(d). Paragraph (1) provides that, under Tax Code, §171.362(f), a \$50 penalty will be assessed if the No Tax Due Report is not filed as required. Paragraph (2) provides that a qualifying new veteran-owned business may not file a franchise

tax report with a combined group because the franchise tax is not imposed on qualifying veteran-owned businesses and they are, therefore, not subject to the combined reporting requirement during an initial five-year period. Paragraph (3) provides that a qualifying new veteran-owned business is not required to file a Public Information Report or an Ownership Information Report under Tax Code, §171.203 because the franchise tax is not imposed on qualifying veteran-owned businesses for an initial five-year period.

Subsection (f) provides the franchise tax beginning date for a qualifying new veteran-owned business that is exempt from franchise tax under Tax Code, §171.063, and subsequently has its federal tax exemption withdrawn. Paragraph (1) provides the beginning date if the new veteran-owned business loses its federal tax exemption before its first five years of business have elapsed. Paragraph (2) provides the beginning date if the new veteran-owned business loses its federal tax exemption after its first five years of business have elapsed.

Subsection (g) provides the expiration date of the provisions in this section as established in SB 1049.

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 implementing recent changes in statutes and by providing clear guidance to businesses. 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*.

This new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) 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, and taxes, fees, or other charges which the comptroller administers under the law.

This new section implements Tax Code, §§171.0001 (General Definitions), 171.0005 (Definition of New Veteran-Owned Business), 171.001 (Tax Imposed), 171.063 (Exemption-Nonprofit Corporation Exempt from Federal Income Tax), and 171.204 (Information Report).

§3.574. Margin: New Veteran-Owned Businesses.

(a) Effective date. This section is effective January 1, 2016.

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

(1) Beginning date--

(A) For a taxable entity that qualifies as a new veteran-owned business, the earlier of:

(i) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

(ii) the date the taxable entity ceases to qualify as a new veteran-owned business.

(B) For example, if a qualifying entity files its certificate of formation with the secretary of state on June 1, 2016, and remains wholly-owned by honorably discharged veterans throughout its first five years of business, the entity becomes subject to franchise tax June 1, 2021. If one of the owners of this same new veteran-owned business sells his or her ownership percentage to anyone other than a qualifying veteran on December 31, 2017, the entity no longer qualifies as a new veteran-owned business and becomes subject to franchise tax January 1, 2018.

(2) Letter of Verification of Veteran's Honorable Discharge--A letter issued by the Texas Veterans Commission, upon request by a veteran, verifying the honorable discharge of the veteran.

(3) New business--A taxable entity that is chartered, organized, or otherwise formed in Texas on or after January 1, 2016, and before January 1, 2020.

(4) New veteran-owned business--A taxable entity that is a new business in which each owner is a natural person who:

(A) served in and was honorably discharged from a branch of the United States armed forces; and

(B) provides verification to the comptroller of the person's service and discharge, as required by subsection (d) of this section.

(c) Tax not imposed. The franchise tax is not imposed on a taxable entity that qualifies as a new veteran-owned business until the earlier of:

(1) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

(2) the date the taxable entity ceases to qualify as a new veteran-owned business.

(d) Verification. A taxable entity that qualifies as a new veteran-owned business must verify that it is owned entirely by qualifying veterans.

(1) Required documents. A taxable entity must submit the following documents as required in paragraph (2) of this subsection:

(A) a "Letter of Verification of Veteran's Honorable Discharge" from the Texas Veterans Commission for each owner of the business; and

(B) comptroller Form 05-904, Certification of New Veteran-Owned Business, or any successor to the form promulgated by the comptroller.

(2) Submission. A taxable entity must submit the required documents identified in paragraph (1) of this subsection to the:

(A) secretary of state, if the taxable entity is formed with the secretary of state on or after January 1, 2016; or

(B) comptroller, along with the appropriate comptroller franchise tax questionnaire, if necessary, if the taxable entity is not required to file a certificate of formation with the secretary of state.

(e) Reporting requirement for a new veteran-owned business. A taxable entity that meets all of the qualifications of a new veteran-owned business is required to file a No Tax Due Report for each reporting period that the franchise tax is not imposed on the taxable entity.

(1) A qualifying new veteran-owned business that fails to file a No Tax Due Report as required shall pay a penalty of \$50 under Tax Code, §171.362(f).

(2) A qualifying new veteran-owned business may not file with a combined group for each reporting period that the franchise tax is not imposed.

(3) A qualifying new veteran-owned business is not required to file a Public Information Report or an Ownership Information Report for each reporting period that the franchise tax is not imposed.

(f) Beginning date upon withdrawal of federal tax exemption. A qualifying new veteran-owned business that is exempt from franchise tax under Tax Code, §171.063 (Exemption for a Non-profit Corporation Exempt from Federal Income Tax) and subsequently has its federal tax exemption withdrawn by the Internal Revenue Service for failure to qualify or maintain its qualification for the exemption has a beginning date:

(1) as provided in subsection (b)(1) of this section if:

(A) in the absence of the federal tax exemption, the franchise tax would not have been imposed on the taxable entity under subsection (c) of this section; and

(B) the effective date of the withdrawal is before the beginning date determined under subsection (b)(1) of this section; or

(2) that is the effective date of the withdrawal, if either paragraph (1)(A) or (B) of this subsection does not apply.

(g) Expiration. The provisions of this section expire January 1, 2020; however, a business that first qualifies as a new veteran-owned business before January 1, 2020, continues to qualify as a new veteran-owned business as provided by 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.

Filed with the Office of the Secretary of State on October 10, 2016.

TRD-201605171

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 20, 2016

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS **SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT**

DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.901

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§748.901, 748.2451, 748.2551, 748.2601, 748.2603, 748.2701, 748.2751, 748.2801, 748.2805, 748.2807, 748.2855, 748.2901, 748.2905, and 748.2907 in Chapter 748, concerning Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care. In late 2015, DFPS began development of rules related to Child Protective Services (CPS) and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the *Texas Register* (41 TexReg 1372) and the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). As a part of this review, the agency convened a temporary workgroup of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code §42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposed changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §748.901 adds a component to the pre-service training regarding emergency behavior intervention, which will require addressing the circumstances when all de-escalation strategies fail.

The amendment to §748.2451 updates the treatment services terminology.

The amendment to §748.2551 deletes a masculine pronoun.

The amendment to §748.2601 clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately.

The amendment to §748.2603 deletes a masculine pronoun.

The amendment to §748.2701 requires an operation to provide notification to the parent within 72 hours of any utilization of a mechanical restraint on the child.

The amendment to §748.2751 clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed".

The amendment to §748.2801 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §748.2805 places limitations on exceeding the maximum length of time for EBI as follows: (1) eliminates possibility of an extension past the maximum length of time for a personal restraint; and (2) specifies that a seclusion or mechanical restraint may never exceed four hours.

The amendment to §748.2807 reiterates limit on exceeding time limits in seclusions and mechanical restraints.

The amendment to §748.2855: (1) clarifies that a caregiver "involved with the intervention" must document in the child's record the intervention; and (2) adds to the documentation requirements for an EBI to include: (a) the names of any witnesses to the EBI, including child witnesses in the home; and (b) the name of the person providing medical treatment or assistance to the child.

The amendment to §748.2901: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §748.2905: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §748.2907 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Division. Electronic comments may be submitted to audrey.carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.901. *If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?*

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

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

(7) Less restrictive strategies caregivers can use to work with oppositional children; ~~and~~

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) [(8)] The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

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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Trevor Woodruff

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SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §748.2451

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2451. *What types of emergency behavior intervention may I administer?*

(a) If permitted in your policies and you meet the requirements of this subchapter, you may administer the following types of emergency behavior intervention to a child in your care:

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

(4) Seclusion:

(A) Only for a child [~~children~~] with an emotional disorder or an Autism Spectrum Disorder [~~disorders or pervasive developmental disorders~~]; and only if you provide treatment services to 25 or more children with emotional disorders or Autism Spectrum Disorder [~~pervasive developmental disorders~~], or if more than 30% of the children in your care receive treatment services for emotional disorders or Autism Spectrum Disorder [~~pervasive development disorders~~]. Seclusion is not permitted for children receiving therapeutic camp services; or

(B) (No change.)

(5) Mechanical restraint, only if you are [~~have~~] a Residential Treatment Center [~~permit~~].

(b) - (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.

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2551

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2551. *What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?*

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

(f) If the child does not appear to understand what the child [~~he~~] must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

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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DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §784.2601, §748.2603

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2601. *Who must monitor a personal restraint?*

(a) During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) Monitor [~~monitor~~] the:

(A) Personal restraint to make sure it is being performed appropriately; and

(B) Child's [~~child's~~] breathing and other signs of physical distress; and

(2) Take [~~take~~] appropriate action to ensure adequate respiration, circulation, and overall well-being.

(b) If available, a caregiver who is not restraining the child should monitor the child. However, general residential operations [~~and residential treatment centers~~] with a capacity of more than 16 children must monitor prone and supine restraints as required in §748.2605(b) of this title (relating to What personal restraint techniques are prohibited?).

§748.2603. *What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?*

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates the child [he] cannot breathe and immediately seeking medical assistance from a health-care professional.

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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DIVISION 7. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A MECHANICAL RESTRAINT

40 TAC §748.2701

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2701. *What are the additional responsibilities for implementing a mechanical restraint?*

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

(e) You must notify a child's parent that mechanical restraint was used on the child within 72 hours after the restraint is concluded.

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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DIVISION 8. SUCCESSIVE USE AND COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2751

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2751. *May a caregiver successively use emergency behavior interventions on a child?*

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

(c) A caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

(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.

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DIVISION 9. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.2801, 748.2805, 748.2807

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2801. *What is the maximum length of time that an emergency behavior intervention can be administered to a child?*

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §748.2801

[Figure: 40 TAC §748.2801]

§748.2805. *Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?*

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §748.2805

[Figure: 40 TAC §748.2805]

§748.2807. *May continuation orders be obtained verbally to exceed the maximum length of time that seclusion or mechanical restraint can be administered to a child?*

(a) (No change.)

(b) If the seclusion and mechanical restraint continues beyond the maximum length of time, then the caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

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

(c) (No change.)

(d) In no event may the order permit the seclusion or mechanical restraint to exceed four hours.

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) 438-3854



DIVISION 10. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2855

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2855. *When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

(a) As soon as possible, but no later than 24 hours after the initiation of the emergency behavior intervention, the caregiver involved in the intervention must document in the child's record the following information:

(1) - (8) (No change.)

(9) The names of any witnesses to the emergency behavior intervention, including any child in care who witnessed the intervention;

(10) [(9)] All attempts to explain to the child what behaviors were necessary for release from the intervention;

(11) [(10)] The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the person(s) who provided medical assistance or treatment; and

(12) [(11)] The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(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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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3854



DIVISION 11. TRIGGERED REVIEWS

40 TAC §§748.2901, 748.2905, 748.2907

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2901. *What circumstances trigger a review of the use of emergency behavior intervention for a specific child?*

(a) The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §748.2901(a)

[Figure: 40 TAC §748.2901]

(b) You may exceed the number of restraints otherwise allowed in (2) Personal restraint of Figure: 40 TAC §748.2901(a) for a child if a licensed psychiatrist or psychologist issues a written order or if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same written information as an order, as specified in §748.2505 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §748.2907 of this title (relating to What must the triggered review include and what must be documented in the child's record?) every 30 days that personal restraints in excess of the threshold are authorized.

§748.2905. *Who must participate in the triggered review?*

(a) A full service planning team must participate in the triggered review. You must invite the child, as appropriate, and the parents to the review, so they may have the opportunity to participate and provide input into the content of the review. However, you are not required to delay a review because a parent or child is unable to participate in the review at its scheduled time.

(b) Even if the child is not receiving treatment services, the two additional professions required in §748.1339(b) of this title (relating to Who must be involved in developing an initial service plan?) must be involved in the triggered review.

§748.2907. *What must the triggered review include and what must be documented in the child's record?*

(a) Except in cases in which the regularly scheduled review of the child's service plan also addresses the requirements of a triggered review in accordance with §748.2903(b) of this title (relating to When must a triggered review occur?), a triggered review is not a full review of the child's service plan and is focused on the requirements identified in subsection (c) of this section.

(b) Other than the requirements in this section and in §748.2905 of this title (relating to Who must participate in the triggered review?), the notification, participation, implementation, and documentation requirements in Division 4 of Subchapter I (relating to Admission, Service Planning, And Discharge) do not otherwise apply to a triggered review.

(c) The following must be included in a triggered review and documented in the child's record:

{(1) The same items that must be included and documented in an initial service plan (see §748.1337 of this title (relating to What must a child's initial service plan include?));}

(1) [(2)] A review of the records and orders of the emergency behavior interventions;

(2) [(3)] A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(3) [(4)] An examination of identified behaviors and patterns, any significant events leading up to the use of emergency behavior intervention, and all attempted de-escalation methods, whether successful or unsuccessful; [alternatives to manage the child's behavior and to assist the child in managing his own behavior; and]

(4) Identification of alternatives to manage the child's behavior and more effectively prevent the use of emergency behavior intervention in the future; and

(5) A written plan for reducing the need for emergency behavior intervention.

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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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3854



CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§749.2281, 749.2283, 749.2331, 749.2335, and 749.2337, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies (CPAs).

BACKGROUND AND PURPOSE

The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care. In late 2015, DFPS began development of rules related to Child Protective Services and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the *Texas Register* (41 TexReg 1372) and the May 20, 2016, issue of the *Texas Register* (41 TexReg 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 1026, issue of the *Texas Register* (41 TexReg 3754). As a part of this review, the agency convened a temporary workgroup

of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code §42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposed changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §749.2281 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §749.2283: eliminates the possibility of an extension past the maximum length of time for a personal restraint.

The amendment to §749.2331: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §749.2335: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §749.2337 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no

anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Services Division. Electronic comments may be submitted to Audrey.Carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DIVISION 7. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2281, §749.2283

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §749.2281

[Figure: 40 TAC §749.2281]

§749.2283. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §749.2283

[Figure: 40 TAC §749.2283]

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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Trevor Woodruff

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Department of Family and Protective Services

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DIVISION 9. TRIGGERED REVIEWS

40 TAC §§749.2331, 749.2335, 749.2337

STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2331. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

(a) The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §749.2331(a)

Figure: 40 TAC §749.2331

(b) You may exceed the number of restraints otherwise allowed in (2) Personal restraint of Figure: 40 TAC §749.2331(a) for a child if a licensed psychiatrist or psychologist issues a written order or

if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same written information as an order, as specified in §749.2105 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §749.2337 of this title (relating to What must the triggered review include and what must be documented in the child's record?) every 30 days that personal restraints in excess of the threshold are authorized.

§749.2335. Who must participate in the triggered review?

(a) The service planning team must participate in the triggered review.

(b) You must invite the child, as appropriate, and the parents to the review, so they may have the opportunity to participate and provide input into the content of the review. However, you are not required to delay a review because a parent or child is unable to participate in the review at its scheduled time.

§749.2337. What must the triggered review include and what must be documented in the child's record?

(a) Except in cases in which the regularly scheduled review of the child's service plan also addresses the requirements of a triggered review in accordance with §749.2333(b) of this title (relating to When must a triggered review occur?), a triggered review is not a full review of the child's service plan and is focused on the requirements identified in subsection (c) of this section.

(b) Other than the requirements in this section and in §749.2335 of this title (relating to Who must participate in the triggered review?), the notification, participation, implementation, and documentation requirements in Division 4 of Subchapter I (relating to Admission, Service Planning, And Discharge) do not apply to a triggered review.

(c) The following must be included in a triggered review and documented in the child's record:

~~{(1) The same items that must be included and documented in an initial service plan, (see §749.1309 of this title (relating to What must a child's initial service plan include?));}~~

(1) ~~{(2)}~~ A review of the records and orders of the emergency behavior interventions;

(2) ~~{(3)}~~ A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(3) ~~{(4)}~~ An examination of identified behaviors and patterns, any significant events leading up to the use of emergency behavior intervention, and all attempted de-escalation methods, whether successful or unsuccessful; ~~{alternatives to manage the child's behavior and to assist the child in managing his own behavior; and}~~

(4) Identification of alternatives to manage the child's behavior and more effectively prevent the use of emergency behavior intervention in the future; and

(5) A written plan for reducing the need for emergency behavior intervention.

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 October 10, 2016.

TRD-201605174

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Earliest possible date of adoption: November 20, 2016
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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC) adopts amendments to Chapter 353, Subchapter A, General Provisions, §353.2, concerning Definitions; Subchapter G, STAR+PLUS, §353.601, concerning General Provisions; and §353.603, concerning Member Participation; and Subchapter H, STAR Health, §353.701, concerning General Provisions; and §353.702, concerning Member Participation. HHSC adopts new Subchapter M, concerning Home and Community Based Services in Managed Care, including new §353.1151, concerning General Provisions; §353.1153, concerning STAR+PLUS Home and Community Based Services (HCBS) Program; and §353.1155, concerning Medically Dependent Children Program. HHSC also adopts new Subchapter N, concerning STAR Kids, including new §353.1201, concerning General Provisions; §353.1203, concerning Member Participation; §353.1205, concerning Service Coordination; §353.1207, concerning Participating Providers; and §353.1209, concerning STAR Kids Handbook. Sections 353.2, 353.603, 353.1153 and 353.1155 are adopted with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5287). The text of the rules will be republished. Sections 353.601, 353.701, 353.702, 353.1151, 353.1201, 353.1203, 353.1205, 353.1207 and 353.1209 are adopted without changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5287) and the text of the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts amendments to Subchapter A to update the definitions rule for Chapter 353, §353.2, concerning Definitions. HHSC also adopts amendments to Subchapters G (relating to STAR+PLUS) and H (relating to STAR Health) to make changes resulting from the STAR Kids implementation. These primarily include changes to the list of client populations who are now mandatory, voluntary, or excluded for STAR+PLUS and STAR Health.

Additionally, HHSC adopts amendments to STAR+PLUS eligibility and program rules under Subchapter G to implement Senate Bill 169 (84th Legislature, Regular Session, 2015), which enacted new Texas Government Code §531.0931 regarding military members and their dependents who are on interest or waiting lists for services.

HHSC adopts new Subchapter M, concerning Home and Community Based Services in Managed Care, which describes the

eligibility and assessment requirements for the STAR+PLUS Home and Community Based Services (HCBS) program offered to qualified members in the STAR+PLUS managed care program and the Medically Dependent Children Program (MDCP).

HHSC adopts new Subchapter N, concerning STAR Kids, implementing Texas Government Code §533.00253, which directs HHSC to establish a mandatory, capitated STAR Kids managed care program tailored to provide Medicaid benefits to individuals with disabilities under the age of 21. HHSC intends for the STAR Kids program to improve coordination of care, access to care, health outcomes, and quality of care with an operational start date of November 1, 2016.

COMMENTS

The 30-day comment period ended on August 21, 2016. During the 30-day comment period, HHSC received written comments from PSA Healthcare and the Texas Association of Home Care and Hospice. Neither commenter was opposed to the proposed rules.

Summaries of each comment and HHSC's response follow:

Comment: One commenter noted that in §353.2(45) "based on the individual's person-centered service plan" is omitted from the definition of "habilitation."

Response: HHSC agrees with the comment and has amended the definition as suggested.

Comment: One commenter noted that §353.2(52) provided a citation for 42 CFR 431.923, but the commenter could not locate this reference.

Response: HHSC agrees and has corrected the citation to reflect the correct reference of 42 CFR 435.923.

Comment: Regarding §353.2(65)(B)(iv), one commenter questioned whether or not the individual's functional need is assessed to determine medical need.

Response: HHSC thanks the commenter for this feedback. HHSC believes the definition of functional necessity in §353.2(44) addresses the commenter's concern, and no changes were made as a result of this comment.

Comment: One commenter noted that in §353.2(80) "significant level of care" is vague in the definition of "significant traditional provider."

Response: HHSC thanks the commenter for this feedback. HHSC declines to make a change to this definition at this time, because the definition of "significant level of care" is specific to each program and cannot be generalized here. HHSC will consider addressing this comment in future rule projects, as the definition applies to all managed care programs and has impact

beyond the primary reason for this rule change, implementation of STAR Kids.

Comment: One commenter noted that that §353.2(83) "long-term services and supports" is vague in the definition of "STAR Kids."

Response: HHSC thanks the commenter for this feedback. The type of long-term service and support provided by the managed care organization (MCO) varies considerably depending on the child or young adult, their enrollment in a waiver program, their residence in an institution, and a number of other factors. The definition as written is meant to be broad enough to account for all of the different scenarios and factors. Therefore, HHSC declines to make a change to this definition at this time.

Comment: One commenter requested a definition for "person centered care services."

Response: HHSC declines to make the suggested change at this time. HHSC will address the requested definition in a future rule project to ensure the public has the opportunity to comment on the proposed definition.

Comment: One commenter requested that the definition of "STAR+PLUS Home and Community-Based Services Program" in §353.2(85) only state the program is for individuals over 21 years old.

Response: HHSC agrees with the comment and, therefore, deleted "who are age 65 or over" and "are blind or have a disability" from the definition and added "Medicaid eligible." The individual over the age of 21 will still have to be otherwise qualified for the program.

Comment: One commenter noted that §353.603(e)(2) uses the term "client," but "individual" and "member" are used elsewhere.

Response: HHSC agrees with the comment and has changed the term "clients" to "individuals" to reduce the number of terms used to describe individuals. Member is used to describe an individual who is enrolled with a managed care organization.

Comment: One commenter noted that that §353.1153(a) is missing a subsection (G)(1).

Response: HHSC disagrees with this comment. Paragraph (2) is not a subpart of subparagraph (G). Rather, subparagraph (G) is a subpart of paragraph (1). Therefore, HHSC declines to make a change to the rule at this time.

Comment: One commenter noted that §353.1153(b)(1)(A) and §353.1155(c)(1)(A) did not note that calls are toll-free or provide a phone number.

Response: HHSC agrees with the comment and has corrected §353.1153(b)(1)(A) and §353.1155(c)(1)(A) to note the toll-free numbers.

Comment: One commenter requested that §353.1153(c)(1)(F) and corresponding §353.1155(d)(1)(F) reflect that service plans may be reviewed and revised at the request of the individual or legally authorized representative.

Response: HHSC agrees with the comment and updated §353.1153(c)(1)(F) and §353.1155(d)(1)(F) to reflect that a service plan may be reviewed and revised at the request of an individual or their legally authorized representative.

Comment: One commenter requested clarity about the terms "residing" and "immediate" in §353.1155(b)(2).

Response: HHSC thanks the commenter for this feedback. HHSC declines to define these terms at this time, as the terms are sufficiently clear in their current context. HHSC will consider addressing this in future rule projects to ensure the public has the opportunity to comment on the proposed language.

Comment: One commenter requested clarity about whether the term "provider" in §353.1155(f) referred to in-network providers.

Response: HHSC thanks the commenter for this feedback. The term "provider" in §353.1155(f) refers to a provider as defined in §353.2(74) who has a contract with the managed care organization. Therefore, HHSC declines to make a change to the rule based on this comment.

Comment: One commenter requested clarity about whether §353.1155(h) refers to HHSC conducting utilization reviews of providers or MCOs.

Response: HHSC thanks the commenter for this feedback. This section of rule pertains to utilization reviews of MCOs. Rules pertaining to HHSC utilization reviews of providers can be found in Texas Administrative Code Title 1, Part 15, Chapter 371, Subchapter C.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

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 §531.00253, which directs HHSC to create the STAR Kids managed care program.

§353.2. Definitions.

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

(1) Action--

(A) An action is defined as:

(i) the denial or limited authorization of a requested Medicaid service, including the type or level of service;

(ii) the reduction, suspension, or termination of a previously authorized service;

(iii) the failure to provide services in a timely manner;

(iv) the denial in whole or in part of payment for a service; or

(v) the failure of a managed care organization (MCO) to act within the timeframes set forth by the Health and Human Services Commission (HHSC) and state and federal law.

(B) "Action" does not include expiration of a time-limited service.

(2) Acute care--Preventive care, primary care, and other medical or behavioral health care provided by the provider or under the direction of a provider for a condition having a relatively short duration.

(3) Acute care hospital--A hospital that provides acute care services.

(4) Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.

(5) Allowable revenue--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(6) Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action.

(7) Behavioral health service--A covered service for the treatment of mental, emotional, or substance use disorders.

(8) Capitated service--A benefit available to members under the Texas Medicaid program for which an MCO is responsible for payment.

(9) Capitation rate--A fixed predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(10) CFR--Code of Federal Regulations.

(11) Children's Medicaid Dental Services--The dental services provided through a dental MCO to a client birth through age 20.

(12) Clean claim--A claim submitted by a physician or provider for health care services rendered to a member, with the data necessary for the MCO or subcontracted claims processor to adjudicate and accurately report the claim. A clean claim must meet all requirements for accurate and complete data as further defined under the terms of the contract executed between the MCO and HHSC.

(13) Client--Any Medicaid-eligible recipient.

(14) CMS--The Centers for Medicare & Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid.

(15) Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(16) Complaint--Any dissatisfaction expressed by a complainant, orally or in writing, to the MCO about any matter related to the MCO other than an action. Subjects for complaints may include:

(A) the quality of care of services provided;

(B) aspects of interpersonal relationships such as rudeness of a provider or employee; and

(C) failure to respect the member's rights.

(17) Consumer Directed Services (CDS) option--A service delivery option (also known as self-directed model with service budget) in which an individual or legally authorized representative employs and retains service providers and directs the delivery of certain program services.

(18) Covered services--Unless a service or item is specifically excluded under the terms of the state plan, a federal waiver, a managed care services contract, or an amendment to any of these, the phrase "covered services" means all health care, long term services and supports, or dental services or items that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC, including:

(A) all services or items comprising "medical assistance" as defined in §32.003 of the Human Resources Code; and

(B) all value-added services under such contract.

(19) Cultural competency--The ability of individuals and systems to provide services effectively to people of various disabilities, cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(20) Day--A calendar day, unless specified otherwise.

(21) Default enrollment--The process established by HHSC to assign a Medicaid managed care enrollee to an MCO when the enrollee has not selected an MCO.

(22) Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

(23) Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

(24) Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or pediatric dentists.

(25) Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving dental trauma. These types of services are treated as health care services in this chapter.

(26) Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

(27) Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(28) Dual eligible--A Medicaid recipient who is also eligible for Medicare.

(29) Elective enrollment--Selection of a primary care provider (PCP) and MCO by a client during the enrollment period established by HHSC.

(30) Emergency behavioral health condition--Any condition, without regard to the nature or cause of the condition, that in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the client would present an immediate danger to themselves or others; or

(B) renders the client incapable of controlling, knowing, or understanding the consequences of his or her actions.

(31) Emergency medical condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care to result in:

- (A) placing the patient's health in serious jeopardy;
- (B) serious impairment to bodily functions;
- (C) serious dysfunction of any bodily organ or part;
- (D) serious disfigurement; or
- (E) serious jeopardy to the health of a pregnant woman or her unborn child.

(32) Emergency service--A covered inpatient and outpatient service, furnished by a network provider or out-of-network provider that is qualified to furnish such service, that is needed to evaluate or stabilize an emergency medical condition and/or an emergency behavioral health condition. For health care MCOs, the term "emergency service" includes post-stabilization care services.

(33) Encounter--A covered service or group of covered services delivered by a provider to a member during a visit between the member and provider. This also includes value-added services.

(34) Enrollment--The process by which an individual determined to be eligible for Medicaid is enrolled in a Medicaid MCO serving the service area in which the individual resides.

(35) EPSDT--The federally mandated Early and Periodic Screening, Diagnosis and Treatment program defined in 25 TAC Chapter 33. The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(36) EPSDT-CCP--The Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program described in Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program).

(37) Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for EPBPs, and contracts with HHSC to provide Medicaid coverage.

(38) Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

(39) Fair hearing--The process adopted and implemented by HHSC in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules) in compliance with federal regulations and state rules relating to Medicaid fair hearings.

(40) Federally Qualified Health Center (FQHC)--An entity that is certified by CMS to meet the requirements of 42 U.S.C. §1395x(aa)(3) as a Federally Qualified Health Center and is enrolled as a provider in the Texas Medicaid program.

(41) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and as in effect for the applicable budget period determined in accordance with 42 C.F.R. §435.603(h). HHSC uses the FPL to determine an individual's eligibility for Medicaid.

(42) Federal waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(43) Former Foster Care Children (FFCC) program--The Medicaid program for young adults who aged out of the conservatorship of Texas Department of Family and Protective Services (DFPS), administered in accordance with Chapter 366, Subchapter J of this title (relating to Former Foster Care Children's Program).

(44) Functional necessity--A member's need for services and supports with activities of daily living or instrumental activities of daily living to be healthy and safe in the most integrated setting possible. This determination is based on the results of a functional assessment.

(45) Habilitation--Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks based on the individual's person-centered service plan.

(46) Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

(47) Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(48) Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the Texas Medicaid program or its designee.

(49) Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code.

(50) Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

(51) Intermediate care facility for individuals with an intellectual disability or related condition (ICF-IID)--A facility providing care and services to individuals with intellectual disabilities or related conditions as defined in §1905(d) of the Social Security Act (42 U.S.C. 1396(d)).

(52) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may, depending on the circumstances, include a parent, guardian, or managing conservator of a minor, or the guardian of an adult, or a representative designated pursuant to 42 C.F.R. 435.923.

(53) Long term service and support (LTSS)--A service provided to a qualified member in his or her home or other community-based setting necessary to allow the member to remain in the most integrated setting possible. LTSS includes services provided under the Texas State Plan as well as services available to persons who qualify for STAR+PLUS Home and Community-Based Program services or Medicaid 1915(c) waiver services. LTSS available through an MCO in STAR+PLUS, STAR Health, and STAR Kids varies by program model.

(54) Main dental home provider--See definition of "dental home" in this section.

(55) Main dentist--See definition of "dental home" in this section.

(56) Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(57) Managed care organization (MCO)--A dental MCO or a health care MCO.

(58) Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(59) Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis, or treatment of a medical or dental condition are not marketing materials.

(60) MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to assist Medicaid beneficiaries under age 21 to live in the community and avoid institutionalization.

(61) Medicaid--The medical assistance program authorized and funded pursuant to Title XIX of the Social Security Act (42 U.S.C. §1396 et seq) and administered by HHSC.

(62) Medical Assistance Only (MAO)--A person who qualifies financially and functionally for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits, as defined in Chapters 358, 360, and 361, of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities, Medicaid Buy-In Program and Medicaid Buy-In for Children Program).

(63) Medicaid for transitioning foster care youth (MTFCY) program--The Medicaid program for young adults who aged out of the conservatorship of Texas Department of Family and Protective Services (DFPS), administered in accordance with Chapter 366, Subchapter F of this title (relating to Medicaid for Transitioning Foster Care Youth).

(64) Medical home--A PCP or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(65) Medically necessary--

(A) For Medicaid members birth through age 20, the following Texas Health Steps services:

(i) screening, vision, dental, and hearing services; and

(ii) other health care services or dental services that are necessary to correct or ameliorate a defect or physical or mental illness or condition. A determination of whether a service is necessary to correct or ameliorate a defect or physical or mental illness or condition:

(I) must comply with the requirements of a final court order that applies to the Texas Medicaid program or the Texas Medicaid managed care program as a whole; and

(II) may include consideration of other relevant factors, such as the criteria described in subparagraphs (B)(ii) - (vii) and (C)(ii) - (vii) of this paragraph.

(B) For Medicaid members over age 20, non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treat-

ments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's medical need;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(vi) not experimental or investigative; and

(vii) not primarily for the convenience of the member or provider.

(C) For Medicaid members over age 20, behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or substance use disorder, or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level or supply of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(66) Member--A person who is eligible for benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care program, and is enrolled in a Medicaid MCO.

(67) Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(68) Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(69) Non-capitated service--A benefit available to members under the Texas Medicaid program for which an MCO is not responsible for payment.

(70) Outside regular business hours--As applied to FQHCs and rural health clinics (RHCs), means before 8 a.m. and after 5 p.m. Monday through Friday, weekends, and federal holidays.

(71) Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(72) Post-stabilization care service--A covered service, related to an emergency medical condition, that is provided after a Medicaid member is stabilized in order to maintain the stabilized condition, or, under the circumstances described in 42 C.F.R. §438.114(b) and (e) and 42 C.F.R. §422.113(c)(iii) to improve or resolve the Medicaid member's condition.

(73) Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(74) Provider--A credentialed and licensed individual, facility, agency, institution, organization, or other entity, and its employees and subcontractors, that has a contract with the MCO for the delivery of covered services to the MCO's members.

(75) Provider education program--Program of education about the Medicaid managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(76) Provider network or Network--All providers that have contracted with the MCO for the applicable managed care program.

(77) Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(78) Rural Health Clinic (RHC)--An entity that meets all of the requirements for designation as a rural health clinic under §1861(aa)(1) of the Social Security Act (42 U.S.C. §1395x(aa)(1)) and is approved for participation in the Texas Medicaid program.

(79) Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(80) Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population, including a DSH.

(81) STAR--The State of Texas Access Reform (STAR) managed care program that operates under a federal waiver and primarily provides, arranges for, and coordinates preventive, primary, acute care, and pharmacy services for low-income families, children, and pregnant women.

(82) STAR Health--The managed care program that operates under the Medicaid state plan and primarily serves:

(A) children and youth in Texas Department of Family and Protective Services (DFPS) conservatorship;

(B) young adults who voluntarily agree to continue in a foster care placement (if the state as conservator elects to place the child in managed care); and

(C) young adults who are eligible for Medicaid as a result of their former foster care status through the month of their 21st birthday.

(83) STAR Kids--The program that operates under a federal waiver and primarily provides, arranges, and coordinates preven-

tative, primary, acute care, and long-term services and supports to persons with disabilities under the age of 21 who qualify for Medicaid.

(84) STAR+PLUS--The managed care program that operates under a federal waiver and primarily provides, arranges, and coordinates preventive, primary, acute care, and long-term services and supports to persons with disabilities and elderly persons age 65 and over who qualify for Medicaid by virtue of their SSI or MAO status.

(85) STAR+PLUS Home and Community-Based Services Program--The program that provides person-centered care services that are delivered in the home or in a community setting, as authorized through a federal waiver under §1115 of the Social Security Act, to qualified Medicaid-eligible clients who are age 21 or older, as cost-effective alternatives to institutional care in nursing facilities.

(86) State plan--The agreement between the CMS and HHSC regarding the operation of the Texas Medicaid program, in accordance with the requirements of Title XIX of the Social Security Act.

(87) Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to people who are 65 years of age or older, are blind, or have a disability administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(88) Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, described at 42 U.S.C. §1396d(r) and 42 CFR §440.40 and §§441.40 - 441.62.

(89) Value-added service--A service provided by an MCO that is not "medical assistance," as defined by §32.003 of the Texas Human Resources 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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SUBCHAPTER G. STAR+PLUS

1 TAC §353.601, §353.603

STATUTORY AUTHORITY

The amendments 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 §531.00253, which directs HHSC to create the STAR Kids managed care program.

§353.603. *Member Participation.*

(a) Except as provided in subsections (b) and (d) of this section, enrollment in the STAR+PLUS program is *mandatory* for Medicaid recipients who meet one or more of the following criteria:

(1) have a physical or mental disability, are age 21 or older, and receive Supplemental Security Income (SSI) benefits or Medicaid due to low income;

(2) qualify for the STAR+PLUS Home and Community-Based Services Program, as described in §353.1153 of this title (relating to STAR+PLUS Home and Community Based Services (HCBS) Program);

(3) are age 21 or older and receive Medicaid because they are in a Social Security Exclusion program and meet financial criteria for STAR+PLUS Home and Community-Based Services Program; or

(4) are age 21 or older and reside in a nursing facility.

(b) In addition to the Medicaid recipients who must enroll in the STAR+PLUS program under subsection (a) of this section, recipients age 21 or older residing in a community-based ICF-IID or receiving services under the following Medicaid 1915(c) waivers and not enrolled in Medicare must enroll in STAR+PLUS to receive acute care services:

(1) Home and Community-based Services (HCS);

(2) Community Living Assistance and Support Services (CLASS);

(3) Texas Home Living (TxHmL); and

(4) Deaf Blind with Multiple Disabilities (DBMD).

(c) Medicaid recipients have a choice among at least two MCOs.

(d) The following Medicaid recipients *cannot* participate in the STAR+PLUS program:

(1) persons under age 21;

(2) residents of state supported living centers;

(3) persons not eligible for full Medicaid benefits; and

(4) persons enrolled in Programs of All-Inclusive Care for Elderly (PACE).

(e) Dual eligible individuals.

(1) Enrollment in Medicare does not affect eligibility for the STAR+PLUS program, except as specified in subsection (b) of this section.

(2) Dual eligible individuals who participate in the STAR+PLUS program receive most acute care services through their Medicare provider, and STAR+PLUS Home and Community-Based Services Program through the STAR+PLUS MCO. Dual eligible individuals who participate in the STAR+PLUS program receive most acute care services through their Medicare provider, but may receive additional services through their STAR+PLUS MCO. The STAR+PLUS program does not change the way dual eligibles receive Medicare services.

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SUBCHAPTER H. STAR HEALTH

1 TAC §353.701, §353.702

STATUTORY AUTHORITY

The amendments 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 §531.00253, which directs HHSC to create the STAR Kids managed care program.

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SUBCHAPTER M. HOME AND COMMUNITY BASED SERVICES IN MANAGED CARE

1 TAC §§353.1151, 353.1153, 353.1155

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 §531.00253, which directs HHSC to create the STAR Kids managed care program.

§353.1153. *STAR+PLUS Home and Community Based Services (HCBS) Program.*

(a) The MCO assesses an individual's eligibility for STAR+PLUS HCBS.

(1) To be eligible for the STAR+PLUS HCBS program, an individual must:

- (A) be 21 years of age or older;
- (B) reside in Texas;
- (C) meet the level-of-care criteria for medical necessity for nursing facility care as determined by HHSC;
- (D) have an unmet need for support in the community that can be met through one or more of the STAR+PLUS HCBS program services;
- (E) choose the STAR+PLUS HCBS program as an alternative to nursing facility services, as described in 42 CFR §441.302(d);
- (F) not be enrolled in another Medicaid HCBS waiver program approved by CMS; and
- (G) be determined by HHSC to be financially eligible for Medicaid, as described in Chapter 358 of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities) and Chapter 360 of this title (relating to Medicaid Buy-In Program).

(2) An individual receiving Medicaid nursing facility services is approved for the STAR+PLUS HCBS program if the individual requests services while residing in the nursing facility and meets eligibility criteria listed in paragraph (1) of this subsection. If the individual is voluntarily discharged from the nursing facility into a community setting before being determined eligible for Medicaid nursing facility services and the STAR+PLUS program, the individual is denied immediate enrollment in the program.

(b) HHSC maintains a statewide interest list of individuals not enrolled in STAR+PLUS interested in receiving services through the STAR+PLUS HCBS program. There is no interest list for individuals currently enrolled in STAR+PLUS who are eligible to receive services through the STAR+PLUS HCBS program. Individuals enrolled in STAR+PLUS may contact their MCO for more information about STAR+PLUS HCBS.

(1) A person may request an individual's name be added to the STAR+PLUS HCBS interest list by:

- (A) calling HHSC toll-free at 1-855-937-2372;
- (B) submitting a written request to HHSC; or
- (C) generating a referral through YourTexasBenefits.com, Find Support Services screening and referral tool.

(2) HHSC removes an individual's name from the STAR+PLUS HCBS interest list if:

- (A) the individual is deceased;
- (B) the individual is assessed for the program and determined to be ineligible;
- (C) the individual or LAR requests in writing that the individual's name be removed from the interest list; or
- (D) the individual is no longer a Texas resident, unless the individual is a military family member living outside of Texas as described in Texas Government Code §531.0931:

- (i) while the military member is on active duty; or
- (ii) for less than one year after the former military member's active duty ends.

(c) The MCO develops a person-centered individual service plan (ISP) for each member, and all applicable documentation, as described in the STAR+PLUS Handbook.

(1) The ISP must:

(A) include services described in the Texas Healthcare Transformation and Quality Improvement Program Waiver, governed by §1115(a) of the Social Security Act.

(B) include services necessary to protect the individual's health and welfare in the community;

(C) include services that supplement rather than supplant the individual's natural supports and other non-STAR+PLUS HCBS supports and services for which the individual may be eligible;

(D) include services designed to prevent the individual's admission to an institution;

(E) include the most appropriate type and amount of services to meet the individual's needs in the community;

(F) be reviewed and revised if an individual's needs or natural supports change or at the request of the individual or their legally authorized representative;

(G) be approved by HHSC; and

(H) be cost effective.

(2) If an individual's ISP exceeds 202 percent of the cost of the individual's level-of-care in a nursing facility to safely serve the individual's needs in the community, the MCO must submit a request for a clinical assessment for general revenue funds to HHSC.

(d) MCOs are responsible for conducting reassessments and ISP development for their enrollees' continued eligibility for STAR+PLUS HCBS, in accordance with the policies and procedures outlined in the STAR+PLUS Handbook and in accordance with the timeframes outlined in the managed care contracts governing STAR+PLUS.

(e) MCOs are responsible for authorizing a network provider of the individual's choosing to deliver services outlined in an individual's ISP.

(f) Individuals participating in STAR+PLUS HCBS have the same rights and responsibilities as any individual enrolled in managed care, as described in Subchapter C of this chapter (relating to Member Bill of Rights and Responsibilities), including the right to appeal a decision made by HHSC or an MCO and the right to a fair hearing, as described in Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules).

(g) HHSC conducts utilization reviews of STAR+PLUS MCOs as described in Texas Government Code §533.00281.

§353.1155. *Medically Dependent Children Program.*

(a) This section applies to the Medically Dependent Children Program (MDCP) services provided under a Medicaid managed care program. The rules under 40 TAC, Chapter 51 (relating to Medically Dependent Children Program) do not apply to MDCP services provided under a Medicaid managed care program.

(b) The MCO assesses an individual's eligibility for MDCP.

(1) To be eligible for MDCP, an individual must:

- (A) be under 21 years of age;
- (B) reside in Texas;
- (C) meet the level-of-care criteria for medical necessity for nursing facility care as determined by HHSC;
- (D) have an unmet need for support in the community that can be met through one or more MDCP service;

(E) choose MDCP as an alternative to nursing facility services, as described in 42 CFR §441.302(d);

(F) not be enrolled in another Medicaid HCBS waiver program approved by CMS;

(G) if the individual is under 18 years of age, reside:

(i) with a family member; or

(ii) in a foster home that includes no more than four children unrelated to the individual; and

(H) be determined by HHSC to be financially eligible for Medicaid under Chapter 358 of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities), Chapter 360 of this title (relating to Medicaid Buy-In Program), or Chapter 361 of this title (relating to Medicaid Buy-In for Children Program).

(2) An individual receiving Medicaid nursing facility services is approved for MDCP if the individual requests services while residing in the nursing facility and meets eligibility criteria listed in paragraph (1) of this subsection. If the individual is discharged from the nursing facility for a community setting before being determined eligible for Medicaid nursing facility services and MDCP, the individual is denied immediate enrollment in the program.

(c) HHSC maintains a statewide interest list of individuals interested in receiving services through MDCP.

(1) A person may request an individual's name be added to the MDCP interest list by:

(A) calling HHSC toll-free 1-877-438-5658;

(B) submitting a written request to HHSC; or

(C) generating a referral through the YourTexasBenefits.com, Find Support Services screening and referral tool.

(2) HHSC removes an individual's name from the MDCP interest list if:

(A) the individual is deceased;

(B) the individual is assessed for the program and determined to be ineligible;

(C) the individual, medical consentor, or LAR requests in writing that the individual's name be removed from the interest list; or

(D) the individual moves out of Texas, unless the individual is a military family member living outside of Texas as described in Texas Government Code §531.0931:

(i) while the military member is on active duty; or

(ii) for less than one year after the former military member's active duty ends.

(3) An individual may request to be placed at the end of the interest list immediately following a determination of ineligibility.

(d) The MCO develops a person-centered individual service plan (ISP) for each individual, and all applicable documentation, as described in the STAR Kids Handbook and the Uniform Managed Care Manual (UMCM).

(1) The ISP must:

(A) include services described in the waiver approved by CMS;

(B) include services necessary to protect the individual's health and welfare in the community;

(C) include services that supplement rather than supplant the individual's natural supports and other non-Medicaid supports and services for which the individual may be eligible;

(D) include services designed to prevent the individual's admission to an institution;

(E) include the most appropriate type and amount of services to meet the individual's needs in the community;

(F) be reviewed and revised if an individual's needs or natural supports change or at the request of the individual or their legally authorized representative; and

(G) be cost effective.

(2) If an individual's ISP exceeds 50 percent of the cost of the individual's level of care in a nursing facility to safely serve the individual's needs in the community, HHSC must review the circumstances and, when approved, provide funds through general revenue.

(e) MCOs are responsible for conducting reassessments and ISP development for their enrollees' continued eligibility for MDCP, in accordance with the policies and procedures outlined in the STAR Kids Handbook, UMCM, or materials designated by HHSC and in accordance with the timeframes outlined in the MCO's contract.

(f) MCOs are responsible for authorizing a provider of the individual's choosing to deliver services outlined in an individual's ISP.

(g) Individuals participating in MDCP have the same rights and responsibilities as any individual enrolled in managed care, as described in Subchapter C of this title (relating to Member Bill of Rights and Responsibilities), including the right to appeal a decision made by HHSC or an MCO and the right to a fair hearing, as described in Chapter 357 of this title (relating to Hearings).

(h) HHSC conducts utilization reviews of MCOs providing MDCP services.

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. STAR KIDS

1 TAC §§353.1201, 353.1203, 353.1205, 353.1207, 353.1209

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 §531.00253, which directs HHSC to create the STAR Kids managed care program.

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1624, concerning Independent Assessment of DSRIP Projects, without changes to the proposed text as published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5486) and will not be republished. HHSC also adopts new Division 6, concerning DSRIP Program Demonstration Year 6, and within the division, HHSC adopts new §354.1661, concerning Definitions; and §354.1667, concerning Requirements for Continuing DSRIP Projects with changes to the proposed as text published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5486). The text of the rules will be republished. HHSC also adopts new §354.1663, concerning Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI); §354.1665, concerning Demonstration Year 6 DSRIP Pool Funding and Distribution; §354.1669, concerning Requirements for Combining Certain DSRIP Projects; §354.1671, concerning DSRIP Requirements for Uncompensated Care Hospitals; §354.1673, concerning Remaining DSRIP Funds; and §354.1675, concerning Anchor Requirements without changes to the proposed text as published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5486) and will not be republished.

BACKGROUND AND JUSTIFICATION

The Texas Healthcare Transformation and Quality Improvement Program, a Section 1115 Waiver (the waiver), authorizes Texas to operate managed care statewide, the Uncompensated Care (UC) pool, and the Delivery System Reform Incentive Payment (DSRIP) pool. DSRIP is a program for hospitals and certain other performing providers (or "performers" as used in the DSRIP rules) to propose and implement transformative projects that increase access to care and quality of care.

The waiver was initially effective from December 12, 2011, through September 30, 2016. However, HHSC and the Centers for Medicare & Medicaid Services (CMS) have agreed to extend the waiver. The 15-month period is considered DY6 (October 1, 2016 to December 31, 2017). DY6 is divided into DY6A and DY6B. DY6A is federal fiscal year 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017). DY6B is the

last three months of DY6 (October 1, 2017 to December 31, 2017). The adopted rules describe the policies for DY6A.

The Program Funding and Mechanics (PFM) protocol outlines the requirements for DSRIP performers. CMS approved the proposed PFM protocol language for DY6A on June 23, 2016. The adopted rules closely mirror the approved DY6A PFM protocol language.

The DY6A PFM protocol language and adopted rules provide that in DY6A, HHSC will simplify the structure and administration of the DSRIP program while maintaining the overall level of funding to performers. To that end, HHSC will focus payments more directly on the impact to patients.

The DY6A PFM protocol language and adopted rules also clarify that compliance monitoring is an ongoing process that will continue in DY6A, and that performers are responsible for providing any requested documentation to the independent assessor and HHSC. In addition, they clarify that HHSC can initiate recoupments based on the findings of the independent assessor.

HHSC received comments regarding the proposed rules, and made changes to the rules based on those comments. HHSC revised §354.1661 and §354.1667 to allow performers of projects with a DY6A MLIU QPI milestone that is pay-for-reporting (P4R) to report on, and receive payment for, the milestone during the first DY6A reporting period if they have done the following by the first DY6A reporting period: 1) achieved or forfeited a DY5 QPI metric; and 2) provided at least one encounter or served at least one individual toward the DY6A MLIU QPI milestone goal.

HHSC also corrected errors in the proposed rules. HHSC revised the figure in §354.1667(e)(10)(B) to correct errors in the methodology for calculating the program year (PY) 3 goal for a Category 3 pay-for-performance (P4P) outcome designated as Quality Improvement System for Managed Care (QISMC) in DY5. First, HHSC corrected the formula for calculating the PY3 goal if the outcome direction is positive (meaning that higher rates indicate improvement) and the baseline is below the minimum performance level (MPL). The revised formula is as follows: $MPL + .15*(HPL - MPL)$. HHSC also corrected the formula for calculating the PY3 goal if the outcome direction is negative (meaning that lower rates indicate improvement) and the baseline is above the MPL. The revised formula is as follows: $MPL - .15*(MPL - HPL)$.

In addition, HHSC revised §354.1667(d)(4) to change the title of the Category 1 and 2 "core component reporting" milestone to "project summary and core components," to more accurately reflect the types of questions performers will need to respond to in order to achieve this milestone. HHSC also added to §354.1667(d)(4) the requirement for performers to attend at least one learning collaborative, stakeholder forum, or other stakeholder meeting during DY6A in order to be eligible for payment for the two Category 1 and 2 non-QPI milestones.

Further, HHSC added language to §354.1667(e)(10)(D) describing the methodology recently approved by CMS for calculating the PY3 goal for a Category 3 P4P survey-based outcome in outcome domain 10 or 11 that is designated as improvement over self (IOS)-survey in DY5. In addition, HHSC clarified language describing how partial payment will be measured for IOS-survey outcomes.

COMMENTS

The 30-day comment period ended August 29, 2016. During this period, HHSC received comments regarding the proposed

rules from several commenters: CHRISTUS Health, Harris Health System, HCA Gulf Coast Division, Memorial Hermann, Midland Memorial Hospital, Nueces County Hospital District, OakBend Medical Center, Odessa Regional Hospital, Regional Healthcare Partnership (RHP) 2, RHP 8, RHP 17, Rice Medical Center, Southwest General Hospital, St. Joseph Medical Center, Tenet Healthcare, Texas Council of Community Centers, and Yoakum Community Hospital. A summary of comments and HHSC's responses follows.

Comment: One commenter requested that §354.1624 be revised to provide for a process that guarantees performers the right to appeal the independent assessor's findings.

Response: HHSC disagrees and declines to revise the rule as the commenter suggests. The current process, established by the independent assessor and HHSC, gives performers sufficient time to request and review the independent assessor's findings, understand the methodology, and provide additional data, if necessary. HHSC is not involved in this part of the review, as the independent assessor is guided by auditing standards and quality measure steward guidelines. The independent assessor informs HHSC if a performer disagrees with the findings, and HHSC provides the independent assessor with its input. The independent assessor then considers HHSC's input in finalizing its findings. HHSC does not believe it is necessary to change this process.

Comment: Multiple commenters recommended revising §354.1667(b) to include a provision that encourages governmental entities to continue providing intergovernmental transfers (IGTs) on behalf of affiliated private hospitals during DY6A. The commenters suggested that one way to do this would be to proportionately reduce a governmental entity's additional DSRIP funding over and above their original Pass 1 DY5 DSRIP allocation if the governmental entity reduces or ends IGT funding for affiliated private hospitals.

Response: HHSC disagrees and declines to revise the rule as the commenter suggests. HHSC does not believe it necessary to add a provision encouraging governmental entities to continue providing IGTs on behalf of affiliated private hospitals for DY6A. Also, HHSC does not have a way to implement such a requirement. In addition, there is already a requirement in §355.8203(h)(2)(B), that if a governmental entity does not transfer, on behalf of each performer owned by or affiliated with that governmental entity, the maximum IGT amount necessary for the performer to receive the maximum payment amount for the payment period, each performer owned by or affiliated with that governmental entity will receive a portion of the value associated with that milestone or quality measure (as specified in the RHP plan) that is proportionate to the total value of all milestones that are completed and eligible for payment for that period by all performers owned by or affiliated with that governmental entity. However, HHSC will take this comment under consideration for the longer term negotiations with CMS.

Comment: One commenter requested additional detail regarding the methodology that HHSC used to determine which DSRIP projects would be eligible for an adjustment to the DY6A total QPI milestone goal as referenced in §354.1667(d)(2). The commenter also requested additional detail regarding the process HHSC used to notify performers of projects determined eligible for such an adjustment.

Response: HHSC found that there were projects with low Category 1 and 2 values relative to other projects that had significantly

overestimated their QPI metric goals during the initial demonstration period. The general policy for DY6A is that projects maintain their DY5 QPI metric goal in DY6A. To avoid further penalizing those projects that were disproportionately challenged to meet their DY4 QPI metric goal, and would therefore likely be disproportionately challenged to meet their DY5 QPI metric goal, HHSC determined that certain projects would be eligible for an adjustment to their DY6A total QPI milestone goal. HHSC established a methodology to determine which projects were eligible for such an adjustment.

The DSRIP projects eligible for an adjustment include projects for which the performer reported 66 percent achievement or less of the DY4 QPI metric as of April DY5 reporting, and for which: 1) The value per MLIU individual is less than or equal to \$1,000; or 2) The value per MLIU encounter is less than or equal to \$500.

The exact formula for calculating value per MLIU individual or encounter is as follows:

$$\frac{(DY4 + DY5 \text{ Category 1 or 2 value})}{[DYs 4 \text{ and } 5 \text{ total MLIU } \% * (DY4 \text{ total QPI goal} + DY5 \text{ total QPI goal})]}$$

In addition, performers of projects with multiple, and potentially overlapping, DY5 QPI metrics that were combined into a single DY6A total QPI milestone were eligible for an adjustment to the DY6A total QPI milestone goal. For example, if a project had one DY5 QPI metric that measured the number of individuals screened for substance abuse, and a second DY5 QPI metric that measured the number of individuals treated for depression and substance abuse, these metrics were likely overlapping, and adding the two DY5 QPI metric goals together would result in an unattainable goal. Therefore, HHSC determined that these projects would be eligible for an adjustment to the DY6A total QPI milestone goal.

Performers were required to complete the DSRIP Participation Form during summer 2016. This form specified project characteristics, including milestone goals, for DY6A. It also allowed for performers to request certain adjustments. Performers that were determined eligible for an adjustment to their DY6A total QPI goal based on the criteria above were notified of their eligibility through this form, and could request an adjustment through this form.

HHSC only evaluated DY4 QPI metrics (and not DY3 or DY5 QPI metrics) because the DY4 data was the most recent data available at the time of the evaluation. HHSC assumes that projects with QPI metrics in DY5 only will have had sufficient ramp-up time to achieve their DY5 QPI metric goals during DY5 or the DY5 carry-forward period (DY6A). Many of the projects that have been disproportionately challenged to achieve their DY4 QPI metric goals were delayed in implementing the projects or seriously overstated their goals (as indicated by the combination of achievement and valuation elements included in the methodology for evaluating eligibility for adjustment). For these reasons, no rule changes were made in response to this comment.

Comment: One commenter requested clarification on the circumstances under which a performer is eligible to report on, and receive payment for, each DY6A Category 1 and 2 milestone during the first reporting period of DY6A.

Response: Each project has four Category 1 or 2 milestones in DY6A: total QPI, MLIU QPI, project summary and core components, and sustainability planning. A performer is eligible to report on, and receive payment for, a project's DY6A total QPI milestone during the first reporting period of DY6A only if the per-

former has achieved or forfeited a DY5 QPI metric and achieved the DY6A total QPI milestone by the first DY6A reporting period.

If a DSRIP project's DY6A MLIU QPI milestone is P4R, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

- (1) achieved or forfeited a DSRIP project's DY5 QPI metric; and
- (2) provided at least one encounter or served at least one individual toward the DSRIP project's DY6A MLIU QPI milestone goal.

If a DSRIP project's DY6A MLIU QPI milestone is P4P, and the project does not have a DY5 MLIU-specific QPI metric, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

- (1) achieved or forfeited a DSRIP project's DY5 QPI metric; and
- (2) achieved the DSRIP project's DY6A MLIU QPI milestone goal.

If a DSRIP project's DY6A MLIU QPI milestone is P4P, and the project has a DY5 MLIU-specific QPI metric, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

- (1) achieved or forfeited the DSRIP project's DY5 MLIU-specific QPI metric; and
- (2) achieved the DSRIP project's DY6A MLIU QPI milestone goal.

A performer may only begin to count individuals served or encounters provided toward a DSRIP project's DY6A MLIU QPI milestone goal after they have achieved or forfeited a DY5 QPI metric or a DY5 MLIU-specific QPI metric.

A performer is only eligible to report on, and receive payment for, a DSRIP project's DY6A MLIU QPI milestone during DY6A or the DY6A carry forward period.

HHSC added §354.1667(d)(3)(H)-(L) to clarify when performers may report on, and receive payment for, the DY6A MLIU QPI milestone.

Performers cannot report on, or receive payment for, the project's two DY6A non-QPI Category 1 and 2 milestones (the project summary and core components milestone and the sustainability planning milestone) during the first reporting period of DY6A. Performers can only report on, and receive payment for, these two milestones during the second reporting period of DY6A.

Comment: Multiple commenters recommended that §354.1667(d)(4) be revised to allow performers to report on, and receive payment for, the core component reporting and sustainability planning milestones during the first reporting period of DY6A. One commenter stated that performers should be able to earn at least half of the value of each of these milestones during the first reporting period of DY6A (i.e., that there should be partial payment for these two milestones).

Response: In the adopted version of this rule, HHSC has revised the name of the core component reporting milestone to project summary and core components. HHSC does not agree that a revision should be made to allow performers to report on, and receive payment for, the project summary and core components and sustainability planning milestones during the first reporting period of DY6A. First, the project summary and core components milestone and the sustainability planning milestone are annual milestones that should reflect the activities that the performers

are conducting throughout DY6A, some of which cannot be conducted by the first reporting period of DY6A. Second, performers have reported relatively few metrics for achievement during the first reporting period of the same DY for Categories 1 and 2. For example, in DY5 Round 1 reporting, of the 1,451 Category 1 and 2 projects, only 293 (20 percent) had a DY5 metric approved, representing only 11 percent of the total DY5 value for all Category 1 and 2 projects. Third, HHSC revised §354.1661 and §354.1667 to allow performers of projects with a DY6A MLIU QPI milestone that is pay-for-reporting (P4R) to report on, and receive payment for, the milestone during the first DY6A reporting period if they have done the following by the first DY6A reporting period: 1) achieved or forfeited a DY5 QPI metric; and 2) provided at least one encounter or served at least one individual toward the DY6A MLIU QPI milestone goal. Fourth, performers still have the opportunity to report on, and receive payment for, Category 3 and Category 4 during the first reporting period of DY6A. Fifth, DSRIP process metrics have not historically been eligible for partial payment because payment for these metrics has been based on completion of the metric rather than reported progress. For these reasons, HHSC did not revise this rule to allow performers to report on, and receive payment for, these two non-QPI milestones during the first reporting period of DY6A.

Comment: One commenter requested that the template for reporting on the sustainability planning milestone referenced in §354.1667(d)(4) be made available to performers to ensure expectations are met.

Response: HHSC plans to post the draft questions to be included in the sustainability planning milestone reporting template to the HHSC website by October 2016. No rule changes were made in response to this comment.

Comment: Multiple commenters requested changes to §354.1667(e)(5). This section specifies that if a Category 3 outcome is designated as P4R or maintenance with a Population Focused Priority Measure (PFPM) in DY5, 100 percent of the outcome's value is P4P of the PFPM. The commenters stated that this approach weighs funds towards outcomes that are even further removed from the intervention population and that it is inconsistent with the approach for Category 3 outcomes designated as P4R with an associated stretch activity in DY5. The commenters also stated that performers would have little experience improving this outcome. The commenters proposed the following alternatives: 1) 50 percent P4P of the PFPM and 50 percent P4R for the Category 3 outcome or another P4P Category 3 outcome; and 2) 100 percent P4P of the PFPM with an allowance for subsets currently in use for Category 3 outcomes.

Response: CMS has expressed interest in significantly increasing the percentage of a performer's total value that is in Category 3 for DY6A. As an alternative, to the extent possible, HHSC has attempted to replace Category 3 P4R milestones with milestones tied to achievement without increasing the volume of measures reported, and with only a modest increase in goals for DY6A. PFPM measures are not substantially different from Category 3 outcomes, as a majority of standard Category 3 outcomes report on a broad population and performers reporting on PFPM outcomes in DY5 are reporting with similar success rates to performers reporting primary P4P Category 3 outcomes. HHSC has worked with performers in extenuating circumstances to approve reporting variances for PFPMs related to data access (similar to facility and payer subsets). Performers with a newly selected PFPM in DY6A have the option to establish a DY4 or DY5 base-

line, with some exceptions to be confirmed by HHSC prior to reporting a PFFM baseline. The first opportunity to report performance of the PFFM will be PY3, which aligns with DY6A. PY3 will be used to report achievement of the DY6 milestone, AM-3.x. A DY4 or DY5 baseline allows for sufficient time to achieve the DY6A goal. Additionally, the DSRIP program has mitigated some of the risk associated with P4P outcomes, including PFFMs, by allowing for partial payment and carry forward. For these reasons, no rule changes were made in response to this comment.

Comment: Multiple commenters requested changes to §354.1667(e)(6). This section specifies that if a Category 3 outcome is designated as P4R with an associated stretch activity in DY5, the performer must choose one of the following options: 1) maintain the P4R outcome from DY5 and select a new stretch activity that does not duplicate the DY5 stretch activity from an HHSC-approved list of stretch activities; or 2) select a PFFM. The HHSC-approved stretch activities under Option #1 include: 1) program evaluation (alternate approaches to program and outcome linkages); 2) new participation in health information exchange (HIE) or improvement of existing HIE infrastructure; and 3) cost analysis and value based purchasing planning. The commenters stated that these approved stretch activities may not be feasible for performers to complete for DY6A, and requested that HHSC add additional stretch activity options for DY6A. The commenters also requested that HHSC revise this section to allow performers with a P4R outcome and associated stretch activity of program evaluation in DY5 to continue that same stretch activity of program evaluation in DY6A in a modified form. In addition, commenters requested that Option 2 be revised to maintain the P4R outcome from DY5 in addition to selecting a PFFM, and that the payment methodology be 50 percent P4R of the outcome and 50 percent P4P of the PFFM.

Response: Following CMS direction to keep Category 3 as P4P, HHSC initially proposed milestone structures for all Category 3 outcomes that did not include a stretch activity. In response, CMS requested that HHSC require stretch activities in DY6A for P4R outcomes with no PFFM in DY5. Outcomes that are P4R with a stretch activity had 100 percent of DY4 and DY5 Category 3 valuation as P4R. Performers with a P4R outcome and stretch activity in DY4 are eligible to receive a median value of \$472,000 for Category 3 P4R activities in DY5, with a median 30 percent of Category 3 valuation in outcomes that are P4R with a stretch activity. Where possible, performers should be moving towards outcomes or more challenging stretch activities.

The new cost analysis and value-based purchasing (VBP) planning stretch activity is applicable to all provider types, is not specific to payer type, and builds on any program evaluations conducted in DY6A. This stretch activity does not require that performers enter into a VBP contract with a specific payer, but rather that performers create a business case for a VBP arrangement through evaluation of the costs and benefits of a DSRIP intervention or portions of a DSRIP intervention. Performers would submit a cost-benefit analysis (CBA) or return-on-investment (ROI) analysis of the project. Costs could include, but would not be limited to, costs associated with ongoing overhead needs, staff/labor, supplies, and equipment costs. Savings/benefits could include, but would not be limited to, reduced utilization of health-care services and improved health outcomes. The CBA or ROI would function as a way to demonstrate that a project is a worthwhile investment to payers (managed care organizations, community, health systems, etc.) to include as a value-based service.

Currently, 77 DSRIP performers are required to select either a new stretch activity or a replacement PFFM for DY6A for one or more Category 3 outcomes. Thirty-nine of the 77 performers reported a PFFM or measure that is identical to a PFFM in DY5 indicating that for the majority of performers, measurement of a PFFM is feasible in DY6A. For performers that opt to select a PFFM to replace a P4R outcome with an associated stretch activity, the approved PFFM menu includes measures that performers with and without subsets have been able to improve dramatically in a short period of time, including BMI Assessment (90 percent success rate in PY1 with a median improvement of 42 percent, reported by all provider types), Follow-Up After Hospitalization for Mental Illness (100 percent success rate in PY1 with a median improvement of 12 percent for 7 day follow up), and Weight Assessment and Counseling for Nutrition and Physical Activity for Children/Adolescents (100 percent success rate, 68 percent median improvement for rate 1, and 69 percent improvement for rate 2).

HHSC believes that all performers will be able to complete the new cost analysis and VBP planning stretch activity or report on a PFFM in DY6A. For these reasons, no rule changes were made in response to this comment.

Comment: Multiple commenters recommended changing §354.1667(e)(10), to make the DY6A goal for Category 3 P4P outcomes equal to, instead of greater than, the DY5 goal. The commenters state that this approach would be consistent with the approach for establishing DY6A QPI goals in DY6A.

Response: HHSC recognizes the inherent risk in P4P outcomes, but sees the value in providing an incentive for performers to continue to improve on performance goals and improve health outcomes in Texas. HHSC was able to negotiate with CMS a modest increase in goals for Category 3 outcomes in DY6A rather than increased funding in Category 3. Unlike QPI, Category 3 goals were not increased prior to DY6A to account for early achievement. Category 3 DY6A goals were set taking into consideration the magnitude of improvement reported in the first year of Category 3 performance reporting. Furthermore, the Category 3 allocations for P4P outcomes were 100 percent P4R in DY3 and 50 percent P4R in DY4. The DSRIP program has mitigated some of the risk associated with P4P outcomes by allowing for partial payment and carry forward. For these reasons, no rule changes were made in response to this comment.

Comment: One commenter indicated that §354.1667(e)(10) references a figure for calculating QISMC PY3 goals, but the commenter was unable to determine the methodology for determining the goal if the baseline was below the MPL.

Response: PY3 goal calculation for QISMC outcomes with a baseline below the MPL can be found in §354.1667(e)(10)(B). The standard PY3 goal calculation for QISMC outcomes with a baseline below the MPL is as follows:

Positive Directionality: $MPL + .15 * (HPL - MPL)$ and

Negative Directionality: $MPL - .15 * (MPL - HPL)$

The PY3 goal calculation is also included in the approved DY6A PFM protocol language, and the draft Category 3 Operational Details document sent to DSRIP anchors.

This methodology for DY6A is consistent with the approved goal setting methodology for DY4 and DY5 for outcomes with a baseline below the MPL, where in PY1 the goal is equal to the MPL, and the PY goal is calculated as the MPL plus or minus 10 per-

cent of the difference between the MPL and HPL, depending on directionality.

In addition to the above methodology, QISMC outcomes with a baseline below the MPL are eligible to submit an alternate achievement request for DY6A goals as stated in §354.1667(e)(10)(F).

Comment: Multiple commenters recommended changing §354.1667(e)(11) to measure partial achievement from the baseline rather than from the DY4 goal, as measuring it from the DY4 goal effectively establishes a new, higher baseline that does not recognize improvements made or maintained between baseline and the DY4 goal.

Response: Measuring partial payment in DY6A over DY4 goals supports continued improvement. For most P4P outcomes, performers had the opportunity to earn payment for closing the gap between their baseline and DY4 goals in two prior reporting years. In DY4, performers who exceeded their DY4 goal were eligible for full payment. In DY5, performers who maintained their DY4 goal but did not reach their DY5 goal earned partial payment. Similarly, in DY6A performers who maintain their DY5 goal but do not reach their DY6A goal will be eligible for partial payment. For these reasons, no rule changes were made in response to this comment.

Comment: One commenter stated that §354.1669 should be revised to allow projects that are combining in DY6A to combine their Category 3 outcome goals to reduce the burden of tracking these outcomes separately.

Response: HHSC disagrees and declines to revise the rule as the commenter suggests. Where possible, HHSC has combined identical P4R outcomes and PFPMs that are under the same Category 1 or 2 project ID in DY6A. HHSC has also combined P4P outcomes that have reported identical rates for baseline and PY1. HHSC cannot combine P4P outcomes that have reported unique baselines and performance as they have unique goals and achievement levels.

Comment: One commenter asked by which date the anchors would receive their one-time anchor payment referenced in §354.1673 and §354.1675.

Response: Anchors can report for their one-time anchor payment during the second reporting period of DY6A in October 2017. If an anchor submits documentation during the second reporting period of DY6A in October 2017 that demonstrates that the anchor met all of the requirements by September 30, 2017, for receiving the DY6A anchor payment, the anchor will receive the anchor payment in January 2018. No rule changes were made in response to this comment.

Comment: One commenter requested that a portion of the one-time anchor payment referenced in §353.1673 and §354.1675 be available prior to the current payment date of January 2018.

Response: It would not be possible for performers to meet the requirements associated with this payment by the first reporting period of DY6A. Similar to the DY1 anchor payments that were based on submission of RHP Plans and used the Medicaid FMAP rather than the 50/50 administrative match, HHSC does not plan to make payments prior to the completion of all requirements. No rule changes were made in response to this comment.

Comment: One commenter requested an estimated timeline for the one-time anchor payment requirements referenced in §353.1673 and §354.1675.

Response: Because requirements for the longer-term extension have not yet been negotiated with CMS, it is difficult to give timelines for the requirements related to DY6B and beyond. The DY6A learning collaborative plan will be due by December 15, 2016. The updated community needs assessment is estimated to be due by June 2017. However, at this time it is unclear by when the extension stakeholder engagement forum will need to be completed, or by when the updated RHP plan for DY6B and beyond will be due. No rule changes were made in response to this comment.

Comment: Multiple commenters recommended changes to §354.1667(f), relating to Category 4. Proposed §354.1667(f) states that if a performer's Category 4 value is greater than ten percent of the performer's total value, the funds in excess of the ten percent will be redistributed to Category 3. For most performers who selected Reporting Domain (RD) 6 in the initial demonstration period, their Category 4 value is greater than ten percent of their total value. The commenters argued that HHSC should give performers who had RD 6 in the initial demonstration period the opportunity to reallocate the funds in excess of the ten percent to Category 1 or 2 for DY6A as long as the allocation comports with the DSRIP category funding distribution described in paragraph 38 of the PFM protocol and proposed §354.1665. They stated that the original source of the RD 6 funds was Categories 1 and 2, so performers that selected RD 6 thought that they were shifting payment risk from Categories 1 and 2 to Category 4. Therefore, the commenters would like the opportunity to shift the risk back to Categories 1 and 2.

Response: One of CMS's goals for 1115 demonstration waivers is to focus more on outcomes-based payments. As part of the negotiations with CMS for the 15-month waiver extension, HHSC proposed to move the RD 6 pay-for-reporting funds to Category 3 outcomes. This allowed HHSC to maintain the previously CMS-approved valuations for Category 1 and 2 projects and the Category 3 minimum at 33 percent of the performer's total value. There may be an opportunity to change performer values for DY7 onward depending on the outcome of negotiations with CMS for the first 15 months of the waiver extension. No rule changes were made in response to this comment.

DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

1 TAC §354.1624

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 §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 October 10, 2016.

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Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 6. DSRIP PROGRAM DEMONSTRATION YEAR 6

**1 TAC §§354.1661, 354.1663, 354.1665, 354.1667, 354.1669,
354.1671, 354.1673, 354.1675**

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 §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§354.1661. *Definitions.*

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

(1) **Alternate improvement activity**--An activity that must be selected in conjunction with a Category 3 outcome designated as pay-for-reporting (P4R) or maintenance. There are two types of alternate improvement activities: stretch activities and Population-Focused Priority Measures (PFPMs).

(2) **Baseline**--The baseline that HHSC has on record for a Category 3 outcome, typically the baseline that the performer most recently submitted to HHSC.

(3) **Baseline measurement period**--The time period used to set the baseline for a Category 3 outcome.

(4) **Category 3 outcome**--An outcome measure for which a performer can earn Category 3 payments.

(5) **Demonstration Year (DY) 6**--The initial 15-month time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period, or October 1, 2016 - December 31, 2017.

(A) **DY6A**--Federal fiscal year (FFY) 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017).

(B) **DY6B**--The last three months of DY6 (October 1, 2017 to December 31, 2017).

(6) **Extension period**--The entire time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period.

(7) **Federal poverty level**--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(8) **Improvement floor**--A fixed value equal to ten percent of the difference between the minimum performance level (MPL) and the high performance level (HPL) for a Category 3 outcome. It is used to set the performance year (PY) goal for certain Category 3 outcomes designated as pay-for-performance (P4P) and Quality Improvement System for Managed Care (QISMC) that have a baseline that is either close to the HPL or above the HPL.

(9) **Improvement over self (IOS)**--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under IOS, an outcome's goal is set as closing the gap between the baseline and the perfect rate.

(10) **Initial demonstration period**--The first five DYs of the waiver, or December 12, 2011, through September 30, 2016.

(11) **Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI)**--The number of MLIU individuals served, or encounters provided to MLIU individuals, during an applicable DY that are attributable to the DSRIP project.

(12) **Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI) Goal**--The number of MLIU individuals that a performer intends to serve, or the number of MLIU encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(13) **Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI) - Specific Metric**--A QPI metric in the initial demonstration period that is specific to counting the MLIU population. This metric usually represents a subpopulation of another QPI metric and has a metric ID of I-34.1.

(14) **Performance level**--The benchmark level used to determine a Category 3 outcome's performance year (PY) goal relative to the baseline under the Quality Improvement System for Managed Care (QISMC) goal-setting methodology. There is a high performance level (HPL) and minimum performance level (MPL) for each outcome, as described in the RHP Planning Protocol.

(15) **Performance Year (PY)**--The 12-month measurement period that follows the baseline measurement period for a Category 3 outcome. For most outcomes, PY1 is the 12-month period that immediately follows the baseline measurement period, and PY2 is the 12-month period that immediately follows PY1.

(16) **Population-Focused Priority Measure (PFPM)**--A Category 3 outcome designated as pay-for-performance (P4P) that is an alternate improvement activity.

(17) **Pre-DSRIP baseline**--The service volume prior to the implementation of a DSRIP project, as measured by the number of individuals served or encounters provided during the 12-month period preceding the implementation of the DSRIP project. There is a pre-DSRIP baseline for total QPI and a pre-DSRIP baseline for MLIU QPI.

(18) **Quality Improvement System for Managed Care (QISMC)**--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under QISMC, an outcome's goal is set as closing the gap relative to the baseline and a high performance level (HPL) and minimum performance level (MPL) benchmark.

(19) **Quantifiable Patient Impact (QPI) Grouping**--The category of the QPI measurement. The category may be either individuals served or encounters provided.

(20) **Reporting Domain (RD)**--Category 4 contains five domains upon which hospital performers must report, as specified in the Program Funding and Mechanics (PFM) Protocol.

(21) Stretch activity--A pay-for-reporting (P4R) activity that is an alternate improvement activity.

(22) Total Quantifiable Patient Impact (QPI)--The total number of individuals served or encounters provided during an applicable DY that are attributable to the DSRIP project.

(23) Total Quantifiable Patient Impact (QPI) Goal--The total number of individuals that a performer intends to serve, or the total number of encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(24) Uncompensated Care (UC) Hospital--A hospital eligible to be a performer that is not a performer, but receives UC payments.

§354.1667. *Requirements for Continuing DSRIP Projects.*

(a) A performer's total value for demonstration year (DY) 6A is equal to the performer's total value for DY5 with the following exceptions:

(1) HHSC notifies a performer that a DSRIP project's value may be reduced if the DSRIP project fails to complete DSRIP project or metric goals by the end of DY5.

(2) Performers with a total value less than \$250,000 for DY5 may increase their total value to up to \$250,000 per each subsequent DY beginning in DY6A. The increase in value is contingent on funds availability as described in §354.1673 of this division (relating to Remaining DSRIP Funds). Categories 1-4 will each be increased proportionately. However, any funds in excess of the 10 percent maximum for Category 4 will be allocated to Category 3. A performer may need to increase a DSRIP project's MLIU QPI goal for DY6A and beyond in order to obtain the increased value. Performers eligible for this option must make this choice by a date to be determined by HHSC.

(b) The DY5 IGT process, payment calculations, and monitoring IGT are continued in the extension period. IGT entities from DY5 will continue to provide funding for the extension period unless a performer submits changes during the reporting period. No new certifications (RHP Plan Section VI) are required for continuing RHP participants.

(c) If a performer participated in Category 4 in DY5, the performer will continue to participate in Category 4 in DY6A. The performer's Category 4 value for DY6A will be equal to the performer's Category 4 value for DY5, unless the performer's DY5 Category 4 value is greater than 10 percent of the performer's total DY5 value. In such a situation, the performer's DY6A Category 4 value will be reduced to 10 percent of the performer's total DY5 value, and the funds above the 10 percent threshold will be allocated to Category 3 in DY6A.

(d) The following Category 1 and 2 requirements must be met in DY6A:

(1) Each DSRIP project must have the following four milestones:

(A) a total Quantifiable Patient Impact (QPI) milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(B) a Medicaid and Low-income or Uninsured (MLIU) QPI milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(C) a core component reporting milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value; and

(D) a sustainability planning milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value.

(2) Total Quantitative Patient Impact (QPI) Milestone.

(A) HHSC will convert each total QPI metric to a total QPI milestone with standardized language. However, if a DSRIP project has multiple QPI metrics in DY5, that project may be exempted from this conversion, based on criteria determined by HHSC and CMS.

(B) The total QPI goal is equal to the DY5 total QPI goal.

(i) Certain DSRIP projects are eligible for an adjustment to the total QPI goal. These DSRIP projects include projects for which the provider reported 66 percent achievement or less of their DY4 total QPI metric as of April DY5 reporting, and for which:

(I) the value per MLIU individual is less than or equal to \$1,000; or

(II) the value per MLIU encounter is less than or equal to \$500.

(ii) Performers of a DSRIP project described in clause (i) of this subparagraph may, by a date determined by HHSC in a form determined by HHSC, request an adjustment to the DSRIP project's total QPI goal.

(C) DSRIP projects must retain the same QPI grouping from the initial demonstration period for total QPI.

(D) DSRIP projects must retain the same pre-DSRIP baseline for total QPI from the initial demonstration period. If multiple metrics are combined to form one total QPI milestone, the pre-DSRIP baselines will also be combined.

(E) DSRIP projects may carry forward total QPI milestones from DY6A to DY6B and DY7.

(3) MLIU QPI Milestone.

(A) Beginning in DY6A, there is an MLIU QPI milestone.

(B) For DSRIP projects that have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU QPI goal. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) If the DSRIP project has an MLIU QPI metric in DY5, it retains the same pre-DSRIP baseline for MLIU QPI used in the initial demonstration period.

(iii) If the DSRIP project does not have an MLIU QPI metric in DY5, the pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iv) The MLIU QPI milestone must be pay-for-performance (P4P).

(C) For DSRIP projects that do not have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU percentage goal multiplied by the DY5 total QPI goal, or as indicated in the DY5 goal language. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) The pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iii) Although all DSRIP projects must include an MLIU QPI goal, DSRIP projects under this subparagraph, with the exception of projects subject to clause (iv) of this subparagraph, must include an MLIU QPI milestone that is pay-for-reporting (P4R). This means that the performer is eligible to receive payment for the project's MLIU QPI milestone by reporting their actual MLIU QPI achievement, regardless of whether the performer achieved the MLIU QPI goal.

(iv) HHSC may determine that some of these DSRIP projects must include an MLIU QPI milestone that is P4P, meaning that the performer must demonstrate achievement of the project's MLIU QPI goal in order to receive payment for the MLIU QPI milestone.

(I) These DSRIP projects include the following:

(-a-) all Project Area 1.9 DSRIP projects, as described by the RHP Planning Protocol;

(-b-) DSRIP projects that did not achieve the estimated MLIU percentage in DY3, DY4, or DY5, and that caused them to have a higher than expected value per MLIU individual/ encounter;

(-c-) DSRIP projects for which HHSC notified the performer that the project was eligible to continue with changes, but the project's MLIU QPI milestone must be P4P; and

(-d-) DSRIP projects that included an MLIU goal in their QPI metric Baseline/Goal statement (an embedded goal) of the performer's own choosing or that were required to include MLIU to receive CMS initial DSRIP project approval.

(II) A performer of a DSRIP project with an MLIU QPI milestone that is P4P under this section may request to adjust the pre-DSRIP baseline for MLIU QPI by a date determined by HHSC in a form determined by HHSC. HHSC will consider requests to adjust the pre-DSRIP baseline for MLIU QPI and may approve those requests with a strong justification.

(D) Certain DSRIP projects are eligible for an adjustment to the MLIU QPI goal. These DSRIP projects include:

(i) a DSRIP project that HHSC identifies as underperforming on MLIU QPI estimates in the initial demonstration period;

(ii) a DSRIP project that is reporting on individuals or encounters that meet the MLIU definition for the initial demonstration period, but will not meet the MLIU definition for the extension period; and

(iii) any other DSRIP project that HHSC determines has a strong justification for an adjustment.

(E) Performers of a DSRIP project described in subparagraph (D) of this paragraph may, by a date to be determined by HHSC, request an adjustment to the DSRIP project's MLIU QPI goal.

(F) DSRIP projects must retain the same total QPI grouping from the initial demonstration period for MLIU QPI.

(G) DSRIP projects may carry forward MLIU QPI milestones from DY6A to DY6B and DY7.

(H) If a DSRIP project's DY6A MLIU QPI milestone is P4R, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

(i) achieved or forfeited a DSRIP project's DY5 QPI metric; and

(ii) provided at least one encounter or served at least one individual toward the DSRIP project's DY6A MLIU QPI milestone goal.

(I) If a DSRIP project's DY6A MLIU QPI milestone is P4P, and the project does not have a DY5 MLIU-specific QPI metric, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

(i) achieved or forfeited a DSRIP project's DY5 QPI metric; and

(ii) achieved the DSRIP project's DY6A MLIU QPI milestone goal.

(J) If a DSRIP project's DY6A MLIU QPI milestone is P4P, and the project has a DY5 MLIU-specific QPI metric, the performer is eligible to report on, and receive payment for, the DY6A MLIU QPI milestone once the performer has done the following:

(i) achieved or forfeited the DSRIP project's DY5 MLIU-specific QPI metric; and

(ii) achieved the DSRIP project's DY6A MLIU QPI milestone goal.

(K) A performer may only begin to count individuals served or encounters provided toward a DSRIP project's DY6A MLIU QPI milestone goal after the performer has achieved or forfeited a DY5 QPI metric or a DY5 MLIU-specific QPI metric.

(L) A performer is only eligible to report on, and receive payment for, a DSRIP project's DY6A MLIU QPI milestone during DY6A or the DY6A carry forward period.

(4) Non-QPI Milestones.

(A) DSRIP projects must include the following non-QPI milestones:

(i) project summary and core components, which may include continuous quality improvement (CQI); and

(ii) sustainability planning, which may include activities toward furthering the exchange of health information, integration into managed care, collaboration with other community partners, or a project level-evaluation.

(B) Performers must attend at least one learning collaborative, stakeholder forum, or other stakeholder meeting during DY6A and report on their activities for these milestones in order to be eligible for milestone payment.

(C) DSRIP projects may report on DY6A non-QPI milestones only during the second reporting period of DY6A.

(D) DSRIP projects may not carry forward non-QPI milestones from DY6A to DY6B or DY7.

(e) The following Category 3 requirements must be met in DY6A:

(1) The Category 3 outcome values are equal to the Category 3 outcome values for DY5. However, if a performer's Category 4 value is greater than 10 percent of the performer's total value, the Category 4 funds in excess of the 10 percent will be redistributed to the performer's Category 3 outcomes proportionately.

(2) If a Category 3 outcome has multiple parts, the Category 3 outcome's value is equally divided among the parts.

(3) Each Category 3 outcome is designated as pay-for-performance (P4P), pay-for-reporting (P4R), or maintenance. The direction of an outcome (positive or negative) necessary to demonstrate improvement is described in the Category 3 Compendium. An outcome designated as maintenance was high performing at baseline with no

reasonable room for improvement and was approved to use a milestone structure for DYs 3-5 that includes an alternate improvement activity.

(4) If a Category 3 outcome is designated as pay-for-performance (P4P) in DY5, 100 percent of the Category 3 outcome's value is P4P.

(5) If a Category 3 outcome is designated as pay-for-reporting (P4R) or maintenance with a population focused priority measure (PFPM) in DY5, 100 percent of the Category 3 outcome's value is P4P of the PFPM.

(6) If a Category 3 outcome is designated as P4R with an associated stretch activity in DY5, the performer must choose one of the following options by a date determined by HHSC in a form determined by HHSC:

(A) Maintain the Category 3 outcome designated as P4R from DY5 and select a new stretch activity that does not duplicate the DY5 stretch activity.

(i) The performer must select a new stretch activity from the following:

(I) program evaluation (alternate approaches to program and outcome linkages);

(II) new participation in health information exchange (HIE) or improvement of existing HIE infrastructure; or

(III) cost analysis and value-based purchasing planning.

(ii) Under this option, 50 percent of the Category 3 outcome's value is P4R of the Category 3 outcome and 50 percent is for completion of the stretch activity.

(B) Select a PFPM. Under this option, 100 percent of the Category 3 outcome's value is P4P of the selected PFPM.

(7) If a Category 3 outcome is designated as maintenance with an associated stretch activity in DY5, 100 percent of the Category 3 outcome's value is for statistically significant maintenance of the baseline.

(8) If a Category 3 outcome is designated as P4P in DY5, performance year (PY) 3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5, or a performer may request, by a date to be determined by HHSC, to use DY6A as PY3. PY4 is the 12-month period immediately following PY3.

(9) If a Category 3 outcome is designated as P4R in DY5, PY3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5.

(10) If a Category 3 outcome is designated as P4P in DY5, the outcome's goal is set as an improvement over the baseline from DYs 3-5 to be achieved in PY3, or PY4 if not fully achieved in PY3.

(A) One of the following methodologies is used to set the outcome's goal, as described in the RHP Planning Protocol:

(i) Quality Improvement System for Managed Care (QISMC);

(ii) Improvement over self (IOS); or

(iii) IOS - Survey.

(B) If an outcome is designated as QISMC in DY5, the outcome's PY3 goal is calculated as follows, using the baseline, minimum performance level (MPL), and high performance level (HPL) that were used for goal setting in DYs 3-5:

Figure: 1 TAC §354.1667(e)(10)(B)

(C) If an outcome is designated as IOS in DY5, the outcome's PY3 goal is a 12.5 percent gap closure towards perfect over the baseline.

(D) If an outcome is a P4P survey-based outcome in outcome domain 10 or 11 as defined in the RHP Planning Protocol, and is designated as IOS-survey in DY5, the outcome's PY3 goal is calculated as follows, using the reporting scenario approved for goal setting in DY5:

Figure: 1 TAC §354.1667(e)(10)(D)

(E) If an outcome has an HHSC approved alternate achievement request in DY5, the performer must submit to HHSC, by a date determined by HHSC in a form determined by HHSC, a request to use a PY3 goal that is a continuation of the goals approved in DYs 4-5. Such requests will be approved by HHSC on a case-by-case basis.

(F) If an outcome is designated as QISMC in DY5, with a baseline that is below the MPL, and the performer is measuring a population substantially dissimilar from the population used to establish the MPL benchmark, the performer may submit, by a date determined by HHSC in a form determined by HHSC, an alternate achievement request to set the PY3 goal as a 12.5 percent gap closure towards perfect over the baseline.

(11) Partial payment for a Category 3 P4P outcome is available in quartiles as defined in the RHP Planning Protocol, measured between the outcome's PY1 goal and PY3 goal.

(A) Each Category 3 P4P outcome has an associated achievement milestone that is assigned an achievement value based on the performer's achievement of the outcome's goal as follows:

(i) if 100 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 1.0;

(ii) if at least 75 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.75;

(iii) if at least 50 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.5;

(iv) if at least 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.25; or

(v) if less than 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.

(B) The percent of the goal achieved is determined as follows:

Figure: 1 TAC §354.1667(e)(11)(B)

(i) If an outcome is approved to use a baseline established in DY4, partial payment will be measured over a PY1 equivalent goal. The PY1 equivalent goal will follow the QISMC or IOS goal calculations for PY1 as approved in the RHP Planning Protocol.

(ii) If a QISMC outcome has a PY3 goal that was determined using the improvement floor, partial payment will be measured over the PY1 equivalent goal. If a higher rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline plus 40 percent of the improvement floor. If a lower rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline minus 40 percent of the improvement floor.

(iii) If an IOS - Survey outcome is approved to use goal setting Scenario 2 or Scenario 3, partial payment will be measured over a PY1 equivalent goal. The PY1 equivalent goal will follow the IOS goal calculations for PY1 as approved in the RHP Planning Protocol.

(12) Performers may carry forward Category 3 milestones from DY6A to DY6B and DY7.

(f) The following Category 4 requirements must be met in DY6A:

(1) Requirements for Category 4 are the same as the requirements for Category 4 Reporting Domains (RDs) 1-5 in DY5.

(2) If a performer's Category 4 value is greater than 10 percent of the performer's total value, the funds in excess of the 10 percent will be redistributed to Category 3.

(3) The optional RD6 will be removed as it was required to value Category 4 at the 15 percent maximum in DYs 3-5.

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 October 10, 2016.

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Texas Health and Human Services Commission

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CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.501, concerning Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE), with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5298). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

Federal law (42 U.S.C. §1396u-4) permits a state to operate a PACE program to provide comprehensive health care services to eligible individuals; providers are to be paid a capitated amount that is "less than the amount" the State would otherwise have paid under Medicaid "if the individuals were not" PACE-enrollees. Texas has elected to operate PACE since 2003.

The purpose of the amendments is three-fold. First, the amendments align the rule with the shift from a fee-for-service payment system to a managed care payment system. The amendments thus adjust the underlying methodology and the data sources for determining PACE reimbursement. Second, the amendments reflect the termination of the Community-Based Alternatives (CBA) 1915(c) waiver. And third, the amendments implement Texas Human Resources Code §§32.0532 - 32.0534, adopted by House Bill 3823, 84th Legislature, Regular Session, 2015, which outline new requirements for reimbursement methodology. On the whole, the statutes link PACE reimbursement rates to those of the STAR+PLUS Medicaid program, modify the methods for collecting PACE and STAR+PLUS Medicaid

program data, and require a comparison of PACE costs and care outcomes to STAR+PLUS Medicaid costs and outcomes.

COMMENTS

The 30-day comment period ended August 22, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

HHSC revised subsection (c)(4) of the rule to correctly cross reference paragraph (3)(B) of subsection (c).

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 §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements. The amended rules implement Texas Human Resources Code §§32.0532 - 32.0534.

§355.501. *Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).*

(a) General specifications. The Texas Health and Human Services Commission (HHSC) determines the upper payment limits and reimbursement rates for each PACE contractor. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Frequency of reimbursement determination. The upper payment limits and reimbursement rates are determined coincident with the state's biennium.

(c) Upper payment limit determination. There are three upper payment limits calculated for each PACE contract: one for clients eligible only for Medicaid services (Medicaid-only clients), one for clients eligible for both Medicare and Medicaid services (dual-eligible clients), and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). An average monthly historical cost per client receiving nursing facility services and Home and Community Based Services (HCBS) under either the fee-for-service payment system or the managed care program is calculated for the counties served by each PACE contract for the upper payment limits for Medicaid-only clients and for dual-eligible clients.

(1) The upper payment limits for Medicaid-only and for dual-eligible clients for the biennium are calculated for the base period using historical claims and encounter data and member-month data from the most recent state fiscal year of complete claims available prior to the state's biennium.

(2) The historical costs are derived from claims data for clients age 55 and older receiving nursing facility services or HCBS in the counties served by each PACE contract.

(3) The historical costs include:

- (A) acute care services, including inpatient, outpatient, professional, and other acute care services;
- (B) prescriptions;
- (C) medical transportation;
- (D) nursing facility services;
- (E) hospice services;

(F) long-term care specialized services, such as physical therapy, occupational therapy, and speech therapy;

(G) HCBS;

(H) Primary Home Care (including Family Care) services; and

(I) Day Activity and Health Services.

(4) Effective on and after January 1, 2006, the historical prescription costs from paragraph (3)(B) of this subsection that are used in the calculation of the upper payment limit, and as such the associated payment rate, for dual-eligible clients for each PACE contract will exclude the costs of any drug that is in a category covered by Medicare Part D.

(5) To determine an average monthly historical cost for the counties served by each PACE contract, the total historical claims data for the counties served by each PACE contract are divided by the number of member months for the counties served by each PACE contract.

(6) An adjustment for administrative costs is added to the average monthly historical cost per client. The per member month amount is added for:

(A) processing claims, based on the state's cost to process claims under the managed care payment system; and

(B) case management, based on the state's cost to provide case management under the managed care payment system for HCBS clients.

(7) The sum of the average monthly historical cost per client for each PACE contract and the amounts from paragraph (5) of this subsection are projected from the claims data base period identified in paragraph (1) of this subsection to the rate period to account for anticipated changes in costs for each PACE contract. The methodology used for trending historical costs for calculating PACE Upper Payment Limits (UPLs) and rates is comparable to that used for trending costs in the managed care program.

(8) The PACE Upper Payment Limit (UPL) method may be adjusted to account for statistical outliers, small populations, programmatic changes, catastrophic events, or other economic changes, as determined by HHSC to be actuarially appropriate. Data from sources other than those described in paragraphs (1) and (2) of this subsection may be used, if deemed by HHSC necessary to calculate an appropriate UPL. For example, HHSC may consider comparable data from other time periods.

(d) HHSC determines the UPL for Qualified Medicaid Beneficiaries (QMBs) on a statewide basis using the average cost incurred by Medicaid for Medicare co-insurance and deductibles.

(e) Payment rate determination. HHSC calculates three reimbursement rates for each PACE contract: one for clients eligible for Medicaid services (Medicaid Only rate), one for clients eligible for both Medicare and Medicaid services (Dual Eligible rate), and one for clients eligible for only Medicare services as QMBs. The payment rates for the three client categories for each PACE contract are determined by multiplying the UPLs calculated for each PACE contract by a factor less than 1.0. HHSC may reduce the factor as necessary to establish a rate consistent with available funds.

(1) In setting the reimbursement rates under the PACE program, HHSC complies with Texas Human Resources Code §32.0532(b).

(2) The PACE payment rate is less than the amount that would otherwise have been paid under the Texas State Plan if the participants were not enrolled under the PACE program.

(f) Reporting of cost. HHSC may require the PACE contractor to submit financial and statistical information on a cost report or in a survey format designated by HHSC. Cost report completion is governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). HHSC may also require the PACE contractor to submit audited financial statements.

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 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM SUBCHAPTER B. PRESCRIBED PEDIATRIC EXTENDED CARE CENTER SERVICES

1 TAC §§363.201, 363.203, 363.205, 363.207, 363.209, 363.211, 363.213, 363.215

The Texas Health and Human Service Commission (HHSC) adopts new Chapter 363, Subchapter B, concerning Prescribed Pediatric Extended Care Center Services. New §363.201, concerning Purpose, is adopted without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5842) and will not be republished. New §363.203, concerning Definitions; §363.205, concerning Provider Participation Requirements; §363.207, concerning Participant Eligibility Criteria; §363.209, concerning Benefits and Limitations; §363.211, concerning Service Authorization; §363.213, concerning Ordering Physician Responsibilities; and §363.215, concerning Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services are adopted with changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5842). The text of the rules will be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill 492, 83rd Legislature, Regular Session, 2013, enacted Texas Health and Safety Code Chapter 248A to establish Prescribed Pediatric Extended Care Centers (PPECCs) in Texas and provide for their licensure; enacted Texas Human Resources Code §32.024(jj) to require HHSC to establish PPECCs as a separate Medicaid provider type; and, in an uncodified portion, limited the HHSC-established reimbursement rate to no more than 70 percent of the average hourly private duty nursing (PDN) rate. See Act of May 22, 2013, 83rd Leg., R.S., ch. 1168, §§1, 6, 8(c), 2013 Tex. Gen. Laws 2898.

In the next legislative session, the Texas Legislature adopted House Bill 2340, 84th Legislature, Regular Session, 2015, which enacted amendments to Texas Health and Safety Code Chapter 248A. While this bill primarily impacted licensure requirements, some amendments affected the Medicaid program. In particular, the bill clarified that parental accompaniment is not required for services rendered at a PPECC or for transportation to and from a PPECC, and clarified that PPECC services are intended to be a one-to-one replacement of authorized PDN hours unless additional hours are medically necessary. See Act of May 23, 2015, 84th Leg., R.S., ch. 557, §§8, 9, 2015 Tex. Gen. Laws 1943.

A PPECC provides non-residential, center-based care as an alternative to PDN for individuals under the age of 21 with complex medical needs. PPECC services, which include ongoing skilled nursing, personal care services, nutritional counseling, functional developmental services, responsible adult/caregiver training, and psychosocial services, will be made available in traditional fee-for-service Medicaid and Medicaid managed care.

PPECC services may be provided only to individuals who are medically dependent or technologically dependent. The term "medically dependent or technologically dependent" is defined as an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, requires ongoing, technology-based skilled nursing care prescribed by the individual's physician to avert death or further disability or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not, however, include minor or occasional medical conditions that do not require continuous nursing care. Services received in a PPECC must be prescribed by the individual's physician.

Receiving services in a PPECC setting does not supplant an individual's right to PDN services when they are determined medically necessary, but the PDN and PPECC services cannot be provided at exactly the same time (concurrently). Rather, PDN services may be rendered before and after PPECC services in the same day. Under the terms of its license, a PPECC may provide services to a participant for no more than 12 hours in a 24-hour period.

The provisions of the PPECC rate rule, §355.9080, were adopted to be effective January 1, 2016, (40 TexReg 8885).

COMMENTS

The 30-day comment period ended September 12, 2016. During this period, HHSC received comments regarding the new proposed rules from two commenters, the Texas Medical Association and Disability Rights Texas. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter questions whether there is a demand for PPECCs, given that Texas provides PDN and Personal Care Services to Texans younger than 21 years of age in their homes.

Response: HHSC declines to revise the rules in response to this comment. As we have discussed above, the Texas Legislature has directed HHSC to establish PPECCs as a separate provider type. See Tex. Hum. Res. Code §32.024(jj).

Comment: A commenter notes that the proposed rules use the term "client" rather than "individual" and suggests replacing the "outdated" term "client" with "individual" or "participant."

Response: HHSC concurs and has replaced references to "client" with "participant."

Comment: A commenter recommends that §363.203 be amended to define the terms "functional developmental services" and "educational developmental services," consistent with the terms' definitions in the PPECC licensure rules. See 40 Tex. Admin. Code §15.507, §15.508. The commenter urges HHSC to include these definitions to ensure that the PPECC "does not act as the primary education provider for a minor or accept a delegation of responsibility for the provision of a minor's education from an education provider." Without such definitions, the commenter is concerned that there will be confusion about "developmental" services and educational services the school is required to provide in the least restrictive setting.

Response: HHSC disagrees and declines to revise the rules based on this comment. Medicaid does not cover educational services in the PPECC benefit, and the federal Centers for Medicare and Medicaid (CMS) has directed HHSC to remove any references to educational services in the PPECC State Plan Amendment. Consistent with the Medicaid State Plan Amendment for PPECC, HHSC has no references to educational services in the PPECC rules.

The Medicaid covered functional developmental services are described in the Medicaid State Plan pages. Functional developmental services are provided in accordance with 42 CFR §440.130(d) and assist a recipient in maintaining or restoring functional abilities, such as adaptive, motor, and speech. Functional developmental services are provided by a Registered Nurse (RN) or Licensed Vocational Nurse (LVN) licensed under state authority or a direct care staff person under the supervision of an RN. Functional developmental services are based on the needs of the recipient, in accordance with the recipient's plan of care and physician order. Functional services respond to needs identified in a functional assessment.

Comment: A commenter is concerned that the rules--in particular §363.207(a)(6) and §363.213--exceed HHSC's authority. In the commenter's view, by requiring that a minor have a prescription for each authorization period that is "signed and dated by the ordering physician who has personally examined the within 30 days prior to admission and reviewed all appropriate medical records," HHSC restricts a physician's ability to delegate tasks to other health care professionals, imposes an expiration date on a physician's diagnosis, and defines standard of care and valid prescriptions. The commenter recommends that the rules should rely more on established regulations for standards of care and the physician's judgment.

Response: HHSC disagrees and declines to revise the rules based on this comment. These rules are not beyond HHSC's authority to administer the Medicaid program and to determine limitations on covered Medicaid services. The Legislature has given HHSC ultimate authority over Texas Medicaid. Texas Gov't Code §531.0055(b). These rules impact only the operations of PPECCs as a medical assistance program insofar as the PPECCs provide services to Medicaid participants. In addition, the rules are consistent with legislative direction in Senate Bill 492 (2013) and House Bill 2340 (2015) and PPECC licensing regulations. See 40 Tex. Admin. Code ch. 15. Finally, the PPECC examination and prescription requirements (30 days before initial start of care) are similar to the existing PDN benefit, in keeping with the intention that PPECC services be a one-to-one replacement for PDN services.

Comment: A commenter suggests that the requirement in §363.207(a)(6) directing that the physician's personal examination of the occur within 30 days prior to admission to the

PPECC will create "the possibility of needless visits or other additional services." The commenter continues, "Physicians and families alike would not want go through an additional visit, for example, if the physician had recently seen a patient, just so the physician can be within the proposed rules' required 30-day window." The commenter thus recommends that HHSC amend these proposed rules to state only that the physician be subject to already existing standards of care, including the Texas Medical Board's regulations, the physician's professional judgment, or best practices advocated by physician specialty societies. In the commenter's view, this ensures that HHSC's rules are legally sound and also will not create unnecessary administrative burdens on families or on physicians.

Response: HHSC disagrees and declines to revise the rules based on this comment. The physical examination requirement (30 days before the start of care) ensures a current diagnosis and prescription for authorization purposes. Additionally, the requirement is similar to the examination requirement for PDN, in keeping with the intention that PPECC services be a one-to-one replacement for PDN services. HHSC also disagrees that the rule will necessitate needless visits to a physician's office to the extent the commenter suggests. After the initial start of care, a physical examination is required by rule once a year. A physician's signature on a plan of care will continue to suffice as a physician order. These requirements also are similar to the PDN requirements.

Comment: A commenter urges HHSC to maintain the language in §363.207(c) that admissions are voluntary, based on the individual's, or the individual's responsible adult's choice for PPECC services.

Response: HHSC concurs and will maintain the proposed rule text.

Comment: A commenter agrees with §363.209(a)(2), which requires PPECCs to provide transportation between the individual's residence and the PPECC when there is a stated need or prescription for such transportation, an RN or LVN is on board and parents are not required to accompany the individual.

Response: HHSC will maintain this requirement in the adopted PPECC rules.

Comment: A commenter requests that HHSC insert the word "integrated" between the words "most" and "appropriate" in §363.209(a)(3)(B)(ii) so that it reads "providing cost-effective quality care in the most integrated, appropriate environment."

Response: HHSC disagrees and declines to revise the rule based on this comment. HHSC believes the current language in §363.209(a)(3)(B)--"promoting and supporting family-centered, community-based care as a component of an array of service options"--coupled with an emphasis on participant choice throughout the rules, captures the intent of an integrated environment.

Comment: A commenter indicates that, in the commenter's view, §363.209(c)(3) is "overreaching" the legislative direction, which the commenter suggests did not indicate that PPECC services are intended to be a one-to-one replacement of PDN hours unless additional hours are medically necessary. While the commenter agrees that PDN and PPECC cannot be billed at the same time, the commenter does not understand how HHSC will operationalize the requirement.

Response: HHSC disagrees and declines to revise the rule based on this comment. The one-to-one replacement reference

aligns with the plain language of Texas Health and Safety Code §248A.158: "Nursing services provided by a [PPECC] must be a one-to-one replacement of private duty nursing or other skilled nursing services unless additional nursing services are medically necessary." PPECC and PDN cannot be billed simultaneously, as Medicaid does not allow for duplication of services. The PDN can occur in the same day before or after PPECC, but not at the same time. A participant is approved for a specific number of ongoing skilled nursing hours (e.g., currently through PDN). The total number of authorized hours (between PDN and PPECC) are not expected to increase with PPECC services unless the participant's medical condition changes or the approved hours are not commensurate with the participant's needs. When a participant chooses PPECC, the approved hours are shifted from PDN to the PPECC, but the total number of skilled nursing hours authorized would not be impacted. For example, if a participant currently has ten hours of approved PDN a day, and chooses to have six hours a day in a PPECC, six hours would shift to the PPECC and the PDN would retain four hours. For PPECC authorizations, HHSC or its contractors will look at both the current PDN authorization, where applicable, and the PPECC authorization request.

Comment: A commenter suggests that the text of §363.211(g)(5) be modified to be more specific about services other than private duty nursing that might be reduced as a result of accepting PPECC services. In the commenter's view, if the rule is referring to PDN, home health skilled nursing, home health aide services, or any therapies that are medically necessary, the rule could be misleading or inaccurate when the service is medically necessary outside the hours in which PPECC is provided.

Response: HHSC disagrees and declines to revise the rule based on this comment. HHSC believes the rule is sufficiently clear. Services that may be impacted include PDN, personal care services, and home health aide and skilled nursing. Therapies would not be impacted. Approved service hours for PDN, personal care services, and home health aide or skilled nursing would be reduced only in an effort to avoid duplication, as the participant shifts these service hours from the home to the PPECC. To clarify, the total number of hours will not be reduced for these services, as the services are based on a medical necessity.

Comment: A commenter asks who will be trained to and responsible for sharing information about the hours of services provided in a non-PPECC setting that may be reduced before a responsible adult signs the acknowledgement required by the text of §363.211(g)(5).

Response: HHSC does not interpret this comment as a request to modify the rule. In large part, HHSC believes that the providers serving the families and participants will provide this information to them. Medicaid managed care organizations (MCOs) also have contractual obligations to conduct service coordination or service management and inform participants of their service options. MCOs are subject to the PPECC rules.

Comment: Regarding §363.213, concerning Ordering Physician Responsibilities, a commenter is concerned that about situations in which a PPECC-ordering physician gains financially from ordering a child to receive PPECC services. The commenter requests that the rule expressly prevent such a conflict of interest by prohibiting a physician with an employment or contractual relationship with the PPECC from being the ordering physician.

Response: HHSC disagrees and declines to revise the rule based on this comment. Due to the scarcity of certain medical specialists who treat conditions and rare diseases, it is possible for such a specialist to be involved with a PPECC. HHSC does not wish to prevent an individual from receiving either PPECC services or specialty treatment from the individual's provider of choice. However, HHSC acknowledges the concern and will monitor for conflict of interest, and HHSC will take action as necessary if there is a systemic problem.

In addition to the amendments to the proposed rules stated in the responses to comments, HHSC made the following revisions primarily to align the rules with the PPECC state plan amendment, PPECC medical policy and to ensure consistency between fee-for-service Medicaid and Medicaid managed care.

§363.207, Participant Eligibility Criteria: A minor editorial change was made to paragraph (a)(7) to clarify the rule without substantively changing the requirements.

§363.209, Benefits and Limitations: A minor editorial change was made to clause (a)(1)(C)(iii) to clarify the rule without substantively changing the requirements. In addition, HHSC added paragraph (a)(5), related to daily documentation in the 's medical record of the specific person providing services, the type of services performed, and the start and end times of services performed. This language has been added to be consistent with language the federal Centers for Medicare and Medicaid (CMS) has required HHSC to add to the Medicaid State Plan Amendment for PPECC. Finally, HHSC clarified subparagraph (b)(2)(A) related to re-evaluations to include when "authorized services are not commensurate with the 's medical needs and additional authorized hours are medically necessary." This ensures consistent application across fee-for-service and Medicaid managed care.

§363.211, Service Authorizations: HHSC clarified in paragraph (g)(1) that the physician signature on the PPECC plan of care serves as a physician order for authorization purposes. This ensures consistent application between fee-for-service and Medicaid managed care. HHSC clarified that both recertifications, in subsection (h), and revisions, in subsection (i), require the same documentation as an initial authorization. This consolidates the requirements in subsection (g) and minimizes repetition in the rule. To ensure consistent application across fee-for-service Medicaid and Medicaid managed care, HHSC also removed from paragraph (g)(4), (h)(4), and (i)(2) the RN assessment from the list of documents required for an initial, revision, or recertification authorization request, respectively. HHSC further added a new subsection (m) without substantively changing the requirements related to nursing assessments. A nursing assessment is required before initiating services, recertification, and when changes in the 's condition impacts the amount and duration of services (e.g., revisions). A nursing assessment must be performed in these circumstances, but is not required documentation for authorization purposes.

§363.213, Ordering Physician Responsibilities: HHSC revised paragraphs (b)(6) and (7) to clarify text that appeared vague on further review. Specifically, HHSC revised paragraph (b)(6) from the physician "providing a statement" to "affirming in writing" that PPECC services are medically necessary. Similarly, HHSC revised paragraph (b)(7) from "providing a statement" to "affirming in writing" that a "participant's medical condition is sufficiently stable to permit safe delivery of PPECC services as described in the plan of care." Note that these acknowledgements are built into state-developed Medicaid fee-for-service authorization forms for PPECCs. Managed care organizations may use

these forms or develop their own if the MCO-developed forms contain similar elements.

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 Human Resources Code §32.024(jj), which requires HHSC to establish PPECCs as a separate provider type in the Medicaid program.

§363.203. Definitions.

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

(1) Activities of daily living (ADLs)--Activities that include eating, toileting, personal hygiene, dressing, bathing, transferring, positioning, and locomotion or mobility.

(2) Basic services--Basic services include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent participant;

(ii) is developed in conjunction with the participant's responsible adult; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the participant; and

(B) the caregiver training needs of a medically dependent or technologically dependent participant's parent or responsible adult.

(3) Correct or ameliorate--To improve, maintain, or slow the deterioration of the participant's health status.

(4) Fair hearing--The process HHSC has adopted and implemented in Chapter 357, Subchapter A, of this title (relating to Uniform Fair Hearing Rules) in compliance with federal and state regulations governing Medicaid Fair Hearings.

(5) HHSC--The Texas Health and Human Services Commission or its designee, including a contractor or MCO. HHSC is the single state agency charged with administration and oversight of the Texas Medicaid program. HHSC's authority is established in Texas Government Code Chapter 531.

(6) Licensed Vocational Nurse (LVN)--A person licensed by the Texas Board of Nursing to practice vocational nursing in Texas at the time and place the service is provided, in accordance with Texas Occupations Code Chapter 301.

(7) Medicaid Managed Care Organization (MCO)--Any entity with which HHSC contracts to provide Medicaid services and that complies with Chapter 353 of this title (relating to Medicaid Managed Care).

(8) Medically or technologically dependent participant--

(A) An individual 20 years of age or younger:

(i) who has an acute or chronic medically complex or fragile condition or disability; and

(ii) whose condition or disability, as stated in clause (i) of this subparagraph, requires:

(I) ongoing skilled nursing care beyond the level of skilled nursing visits normally authorized under Texas Medicaid home health skilled nursing and health aide services, prescribed by a physician to avert death or further disability; or

(II) the routine use of a medical device to compensate for a deficit in a life-sustaining bodily function.

(B) The term does not include a participant with a controlled or occasional medical condition that does not require ongoing nursing care.

(9) Notice (or notification)--A letter provided by HHSC or an MCO to a participant informing the participant of any reduction, denial, or termination of a requested service, as described in the Code of Federal Regulations, Title 42, §§431.206 and 431.210.

(10) Ordering physician--A doctor of medicine or doctor of osteopathy (M.D. or D.O.), legally authorized to practice medicine or osteopathy at the time and place the service is provided, who provides ongoing medical care for the participant and continuing medical supervision of the participant's plan of care.

(11) Participant--An individual who is eligible to receive PPECC services under Texas Health Steps Comprehensive Care Program (THSteps-CCP) from a provider enrolled in the Texas Medicaid program.

(12) Plan of care--A comprehensive, interdisciplinary protocol of care that includes the physician's order for needed services, nursing care plan, and protocols establishing delegated tasks, plans to address functional developmental needs, plans to address psychosocial needs, personal care services for assistance with activities of daily living, and therapeutic service needs required by a participant and family served.

(13) Prescribed Pediatric Extended Care Center (PPECC)--A center operated on a for-profit or nonprofit basis that provides non-residential basic services to four or more medically dependent or technologically dependent participants who require the services of the center and who are not related by blood, marriage, or adoption to the owner or operator of the center.

(14) Private Duty Nursing (PDN)--Nursing, as described by Texas Occupations Code Chapter 301, and its implementing regulations at 22 TAC Part 11 (relating to the Texas Board of Nursing), that provides a participant with more individual and ongoing care than is available from a visiting nurse or than is routinely provided by the nursing staff of a hospital or skilled nursing facility. PDN services include observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings for a participant who has a disability or chronic health condition or who is experiencing a change in normal health processes.

(15) Registered Nurse (RN)--A person who is licensed by the Texas Board of Nursing to practice professional nursing in Texas at the time and place the service is provided, in accordance with Texas Occupations Code Chapter 301.

(16) Respite--Services provided to relieve a participant's primary care giver.

(17) Responsible adult--An adult, as defined by Texas Family Code §101.003, who has agreed to accept the responsibility for providing food, shelter, clothing, education, nurturing, and supervision for a participant. Responsible adults include biological parents, adoptive parents, foster parents, guardians, court-appointed managing conservators, and other family members by birth or marriage. If the participant is 18 years of age or older, the responsible adult must be the participant's managing conservator or legal guardian.

(18) Skilled nursing--Services provided by a registered nurse or by a licensed vocational nurse, as authorized by Texas Occupations Code Chapter 301 and 22 TAC §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct).

(19) Stable--Status determined by the participant's ordering physician that the participant's health condition does not prohibit utilizing transportation to access outpatient medical services and does not present significant risk to other participants or personnel at the center, as defined at 40 TAC §15.601 (relating to Admission Criteria). The participant must be able to use transportation services offered by the PPECC with the assistance of a PPECC nurse to and from the PPECC, whether or not the participant uses the PPECC's transportation service.

(20) Texas Health Steps Comprehensive Care Program (THSteps-CCP)--A federal program, required by Medicaid and known as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), for children under 21 years of age who meet certain criteria for eligibility. Services are defined in the United States Code, Title 42, §1396d(r), and the Code of Federal Regulations, Title 42, §440.40(b).

§363.205. *Provider Participation Requirements.*

(a) A PPECC service provider must be independently enrolled in the Texas Medicaid program to be eligible to receive Medicaid reimbursement for providing PPECC services through THSteps-CCP.

(b) To participate in THSteps-CCP, a PPECC service provider must:

(1) be currently licensed under and comply with 40 TAC Chapter 15 (relating to Licensing Standards for Prescribed Pediatric Extended Care Centers);

(2) be enrolled and approved for participation in the Texas Medicaid program;

(3) agree to provide services in compliance with all applicable federal, state, and local laws and regulations, including Texas Occupations Code Chapter 301;

(4) comply with the terms of the Texas Medicaid Provider Agreement;

(5) comply with all state and federal regulations and rules relating to the Texas Medicaid program;

(6) comply with the requirements of the Texas Medicaid Provider Procedures Manual, including all published updates and revisions and all handbooks, standards, and guidelines published by HHSC or an MCO with which they contract;

(7) comply with accepted professional standards and principles of nursing practice;

(8) comply with Texas Family Code Chapter 261, and Texas Health and Safety Code Chapter 260A, concerning mandatory reporting of suspected abuse or neglect of children and adults with disabilities; and

(9) maintain written policies and procedures for obtaining consent for medical treatment for participants in the absence of the responsible adult that meet the standards of Texas Family Code §32.001.

§363.207. *Participant Eligibility Criteria.*

(a) All requests for PPECC services must be based on the current medical needs of a participant who meets the following admission criteria for a PPECC:

(1) is eligible for THSteps-CCP;

(2) is age 20 or younger;

(3) requires ongoing skilled nursing care and supervision and skilled observations, judgments, and therapeutic interventions all or part of the day to correct or ameliorate his or her health status, such that delayed skilled intervention is expected to result in:

- (A) deterioration of a chronic condition;
- (B) loss of function;
- (C) imminent risk to health status due to medical fragility; or
- (D) risk of death;

(4) is considered to be a medically dependent or technologically dependent participant;

(5) is stable and eligible for outpatient medical services in accordance with 40 TAC §15.601 (relating to Admission Criteria);

(6) has a prescription for each authorization period for PPECC services signed and dated by the ordering physician who has examined the participant within 30 days prior to admission and reviewed all appropriate medical records;

(7) resides with the responsible adult and does not reside in a 24-hour inpatient facility, including a:

- (A) general acute hospital;
- (B) skilled nursing facility;
- (C) intermediate care facility; or
- (D) special care facility, including sub-acute units or facilities for the treatment of acquired immune deficiency syndrome; and

(8) has a consent to the participant's admission to the PPECC signed and dated by the participant or by the participant's responsible adult.

(b) THSteps-CCP participants are eligible for all medically necessary PPECC services that are required to meet the participant's documented needs.

(c) Admission must be voluntary, based on the participant's, or the participant's responsible adult's choice for PPECC services.

(d) An authorized admission for PPECC services is not intended to supplant the right to a Medicaid PDN benefit, when medically necessary.

§363.209. *Benefits and Limitations.*

(a) Comprehensive plan of care; permissible PPECC services.

(1) The PPECC must develop, implement, and monitor a comprehensive plan of care that:

(A) is provided to a medically dependent or technologically dependent participant;

(B) is developed in collaboration with the participant's ordering physician, responsible adult, and interdisciplinary team, as well as the participant's existing service providers as needed to coordinate care;

(C) specifies the following prescribed services needed to address the medical, nursing, psychosocial, therapeutic, dietary, functional, and developmental needs of the participant and the training needs of the participant's responsible adult:

- (i) skilled nursing;
- (ii) personal care services to assist with activities of daily living while in the PPECC;

(iii) functional developmental services;

(iv) nutritional and dietary services, including nutritional counseling;

(v) occupational, physical and speech therapy;

(vi) respiratory care;

(vii) psychosocial services; and

(viii) training for the participant's responsible adult associated with caring for a medically or technologically dependent participant;

(D) specifies if transportation is needed;

(E) is reviewed and revised for each authorization of services per subsection (d) of this section or more frequently as the ordering physician deems necessary;

(F) is signed and dated by the participant's ordering physician;

(G) is signed and dated by the participant or the participant's responsible adult;

(H) meets additional requirements prescribed in 40 TAC §15.607 (relating to Initial and Updated Plan of Care); and

(I) meets requirements contained in the Texas Medicaid Provider Procedures Manual.

(2) Transportation Services.

(A) The PPECC must provide transportation between the participant's residence and the PPECC when a participant has a stated need or prescription for such transportation.

(B) When a PPECC provides transportation to a PPECC participant, an RN or LVN employed by the PPECC must be on board the transport vehicle.

(C) The PPECC must:

(i) sign, date, and indicate the time the participant is put on the transport vehicle to deliver the participant to the PPECC;

(ii) sign, date, and indicate the arrival time of the participant at the PPECC;

(iii) sign, date, and indicate the time the participant is put on the transport vehicle to return the participant to their place of residence; and

(iv) sign, date, and indicate the arrival time at the participant's residence.

(D) A responsible adult is not required to accompany a participant when the participant receives transportation services to and from the PPECC.

(E) A participant or participant's responsible adult may decline a PPECC's transportation and choose to be transported by other means.

(F) A non-emergency ambulance may not be used for transport to and from a PPECC.

(3) PPECC services, including training provided to the participant's responsible adult associated with caring for a medically or technologically dependent participant, must be provided by the PPECC with the following intended outcomes:

(A) optimizing the participant's health status and outcomes; and

(B) promoting and supporting family-centered, community-based care as a component of an array of service options by:

- (i) preventing prolonged or frequent hospitalizations or institutionalization;
- (ii) providing cost-effective, quality care in the most appropriate environment; and
- (iii) providing training and education of caregivers.

(4) The PPECC must provide written documentation about the participant's care each day to the participant's responsible adult, including documentation of medication given, services provided, and other relevant health-related information. The documentation must be provided each day following service delivery when the responsible adult picks up the participant or when the PPECC transports the participant to his or her residence.

(5) For each day that PPECC services are provided, the participant's medical record must identify the specific person (e.g., nursing, direct care staff, therapist) providing services, the type of services performed, and the start and end times of services performed. The PPECC must be able to calculate the cost by practitioner and type of service provided as requested by HHSC.

(b) Amount and duration.

(1) HHSC evaluates the amount and duration of PPECC services requested upon review of:

- (A) a physician order;
- (B) a PPECC plan of care;
- (C) a completed request for authorization, including all required documentation, as indicated in the Texas Medicaid Provider Procedures Manual; and
- (D) the full array of Medicaid services the participant is receiving at the time the plan of care is developed.

(2) HHSC re-evaluates the amount of PPECC services when:

(A) there is a change in the frequency of skilled nursing interventions, other PPECC medical services, or the complexity and intensity of the participant's care, or the authorized services are not commensurate with the 's medical needs and additional authorized hours are medically necessary;

(B) the participant or the participant's responsible adult chooses alternate resources for comparable care; or

(C) the responsible adult becomes available and is willing to provide appropriate care for the participant.

(c) PPECC service limitations.

(1) The Medicaid rate for PPECC services does not include the following PPECC services:

(A) services intended to provide mainly respite care or child care, or services not directly related to the participant's medical needs or disability;

(B) services that are the legal responsibility of a local school district, including transportation;

(C) services covered separately by Texas Medicaid, such as:

(i) speech therapy, occupational therapy, physical therapy, respiratory care practitioner services, and early childhood intervention services;

(ii) durable medical equipment (DME), medical supplies, and nutritional products provided to the participant by Medicaid's DME and medical supply service providers; and

(iii) private duty nursing, skilled nursing, and aide services provided in the home setting when medically needed in addition to the PPECC services authorized;

(D) baby food or formula;

(E) services to participants related to the PPECC owner by blood, marriage, or adoption;

(F) services rendered to a participant who does not meet the definition of a medically or technologically dependent participant; and

(G) individualized comprehensive case management beyond the service coordination required by the Texas Occupations Code Chapter 301.

(2) PPECC services are limited to 12 hours per day. Services begin when the PPECC assumes responsibility for the care of the participant (the point the participant is boarded onto PPECC transportation or when the participant is brought to the PPECC) and ends when the care is relinquished to the participant's responsible adult.

(3) A participant who is eligible may receive both PDN and PPECC services on the same day. However, PPECC services are intended to be a one-to-one replacement of PDN hours unless additional hours are medically necessary. The following medically necessary services may be billed on the same day as PPECC services, but they may not be billed simultaneously with PPECC services. These services may be billed before or after PPECC services:

(A) private duty nursing;

(B) home health skilled nursing; and

(C) home health aide services.

(d) Parental accompaniment is not required for PPECC services, including therapy services rendered in a PPECC setting.

§363.211. *Service Authorization.*

(a) Authorization is required for payment of services. The provider must submit a complete request for prior authorization in order to be considered by HHSC for reimbursement. Prior authorization is a condition for reimbursement, but not a guarantee of payment.

(b) Only those services that HHSC determines to be medically necessary and appropriate are authorized.

(c) PPECC services are prior authorized with reasonable promptness. Prior authorization determinations are completed by HHSC within three business days of receipt of a complete request.

(d) Initial authorization may not exceed 90 days from the start of care. Following the initial authorization, no authorization for payment of PPECC services may be issued for a single service period exceeding 180 days. In addition, specific authorizations may be limited to a time period less than the established maximum based on factors such as the stability and predictability of the participant's medical condition.

(e) HHSC may deny or reduce the PPECC services when:

(1) the participant does not meet the medical necessity criteria for admission;

(2) the participant does not have an ordering physician;

(3) the participant is not 20 years of age or younger;

(4) the services requested are not covered under this subchapter;

(5) the participant's needs are not beyond the scope of services available through Medicaid Title XIX Home Health Skilled Nursing or Home Health Aide Services, because the needs can be met on a part-time or intermittent basis through a visiting nurse as described by Chapter 354, Subchapter A, Division 3 of this title (relating to Medicaid Home Health Services);

(6) there is a duplication of services;

(7) the services are primarily respite care or child care;

(8) the services are provided for the sole purpose of responsible adult training;

(9) the request is incomplete;

(10) the information in the request is inconsistent; or

(11) the requested services are not nursing services as defined by the Texas Occupations Code Chapter 301 and its implementing regulations.

(f) All authorization requests, including initial authorization and authorization of extensions or revisions to an existing authorization, must be submitted in writing.

(g) Initial authorization requests for PPECC services must include the following documentation, which adheres to requirements in the Texas Medicaid Provider Procedures Manual:

(1) physician order for services (a physician signature on the PPECC plan of care serves as a physician order for authorization purposes);

(2) a plan of care developed by the PPECC in compliance with §363.209(a)(1) of this subchapter (relating to Benefits and Limitations);

(3) all required prior authorization forms listed in the Texas Medicaid Provider Procedures Manual, or MCO forms if they contain comparable content; and

(4) signed consent of the participant or participant's responsible adult documenting the choice of PPECC services. The signed consent must include an acknowledgement by the participant or the participant's responsible adult that he or she has been informed that other services such as private duty nursing might be reduced as a result of accepting PPECC services. Consent to share the participant's personal health information with the participant's other providers, as needed to ensure coordination of care, must also be obtained.

(h) Required documentation for recertification of PPECC service authorization after the initial authorization or after an authorization period ends includes the same documents required for an initial authorization, as set forth in subsection (g) of this section.

(i) Revisions during an existing authorization period may be requested at any time, if medically necessary. Revision requests must include the same documentation required for an initial request, as set forth in subsection (g) of this section.

(j) If inadequate or incomplete information is provided, HHSC requests additional documentation from the provider to enable HHSC to make a decision on the request.

(k) During the authorization process, providers are required to deliver the requested services from the start of care date.

(l) Providers are responsible for a safe transition of services when the authorization decision is a denial or reduction in the PPECC services being delivered.

(m) A nursing assessment must be completed, signed and dated by a PPECC RN no earlier than three business days before the initial start of care. A nursing assessment is also required when there are changes in the participant's medical condition that impact the amount or duration of services, and for recertification. The nursing assessment is used to establish the participant's plan of care, and must contain the elements identified in the Texas Medicaid Provider Procedures Manual.

§363.213. *Ordering Physician Responsibilities.*

(a) An ordering physician in an employment or contractual relationship with a PPECC cannot provide the required physician's order unless the physician has a therapeutic relationship with and ongoing clinical knowledge of the participant.

(b) The ordering physician's responsibilities include:

(1) providing an examination or treatment to the participant within 30 days before the start of PPECC services;

(2) providing a signed prescription or written, dated physician's order for PPECC services within 30 calendar days before the participant's start of services, which is valid through the initial authorization period and complies with requirements contained in the Texas Medicaid Provider Procedures Manual;

(3) providing a signed prescription or written, dated physician's order for each PPECC authorization period, once the initial prescription or order is no longer valid;

(4) performing a face-to-face evaluation of the participant each year;

(5) reviewing, approving, signing, and dating a plan of care, and any other documentation required for service prior authorization, including any updates or changes;

(6) affirming in writing that PPECC services are medically necessary for the participant;

(7) affirming in writing that the participant's medical condition is sufficiently stable to permit safe delivery of PPECC services as described in the plan of care; and

(8) providing continuing care to and medical supervision of the participant.

§363.215. *Termination, Reduction, or Denial of Authorization for Prescribed Pediatric Extended Care Center Services.*

(a) HHSC terminates authorization for PPECC services when:

(1) the participant is no longer eligible for THSteps-CCP;

(2) the participant no longer meets the medical necessity criteria for PPECC services;

(3) the PPECC cannot ensure the health and safety of the participant;

(4) the participant or the participant's responsible adult refuses to comply with the plan of care, and compliance is necessary to assure the health and safety of the participant;

(5) the participant changes PPECC providers, and the change of notification is submitted to HHSC in writing with a prior authorization request from the new PPECC provider; or

(6) after receiving PPECC services, the participant declines PPECC services and receives services at home. The home

health agency or independent provider offering these services must submit and update all required authorization documentation.

(b) Notice to approve, reduce, or deny requested PPECC services.

(1) HHSC notifies the participant and the responsible adult in writing of the approval, reduction, or denial of PPECC services.

(2) HHSC notifies the provider in writing of the approval, reduction, or denial of PPECC services.

(3) The effective date of the service reduction or denial is 30 days after the date on the individual's notification letter.

(4) HHSC notifies the individual in writing of the process to appeal the reduction or denial of services.

(c) All participants of Medicaid-funded services have the right to appeal actions or determinations made by HHSC as described in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules).

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 October 10, 2016.

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Karen Ray

Chief Counsel

Texas Human Health and Services Commission

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For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 100. GENERAL PROVISIONS FOR HEALTH-RELATED PROGRAMS

16 TAC §§100.1, 100.10, 100.20, 100.30, 100.40

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 100, §§100.1, 100.10, 100.20, 100.30 and 100.40, regarding the General Provisions for Health-Related Programs, without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5875). 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 Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4)

Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

In particular, S.B. 202 added a new Section 51.2031, Occupations Code, which applies to the following six programs being transferred from DSHS: Midwives, Speech-Language Pathologists and Audiologists, Hearing Instrument Fitters and Dispensers, Athletic Trainers, Orthotists and Prosthetists, and Dietitians. For these professions the Commission may not adopt a new rule relating to the scope of practice or a health-related standard of care unless the rule has been proposed by the advisory board for the profession, and the Commission must adopt rules prescribing the procedure by which an advisory board may propose such a rule. In addition, Section 51.2031 requires the Commission to adopt rules clearly specifying the manner in which the Department and Commission will solicit input from, and on request provide information to, an advisory board established for one of these professions regarding the general investigative, enforcement, or disciplinary procedures of the Department or Commission. The adopted new rules under 16 TAC Chapter 100 are necessary to implement these provisions of Section 51.2031.

The adopted new §100.1 establishes which health-related programs this chapter applies to.

The adopted new §100.10 creates the definitions to be used in this chapter.

The adopted new §100.20 details the manner in which information will be provided to the advisory boards for these programs.

The adopted new §100.30 prescribes the procedure by which the advisory boards for these programs may propose a new rule relating to the scope of practice or a health-related standard of care.

The adopted new §100.40 directs the Department to develop enforcement procedures for these programs and lists the methods by which the Department may obtain health-related expertise in the investigation and resolution of complaints.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5875). The deadline for public comments was September 12, 2016. During the 30-day public comment period the Department received comments from the Texas Medical Association on the proposed rules. The public comments received are summarized below.

Comment--The Texas Medical Association (TMA) recommended all of the affected health-related advisory boards to be listed in the rules to clarify who the Department is seeking advice from and recommended some related clarifying amendments. TMA also suggested the opinions and recommendations received from advisory boards regarding enforcement procedures should be binding on the Commission and the Department.

Department Response--The Department relies heavily on the input and expertise of the advisory boards and will seek input from the respective boards regarding developing procedures. However, the Department is responsible for its work load and may need to adjust the procedures as the transition occurs to ensure consistency across programs. This comment is also inconsistent

with the statutory framework, which makes the boards advisory. Therefore, the Department believes that the recommendations should not be binding on the Commission or the Department. In addition, the Department does not believe it is necessary to list each advisory board since the rules identify each program this section applies to. The Department did not make any changes to the proposed rules as a result of this comment.

At its meeting on October 5, 2016, the Commission adopted the proposed rules without 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.

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 October 7, 2016.

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Texas Department of Licensing and Regulation

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §§58.21 - 58.23

In a duly noticed meeting on August 25, 2016, the Texas Parks and Wildlife Commission adopted amendments to §§58.21 - 58.23, concerning the Statewide Oyster Fishery Proclamation, without changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5388).

The amendments are intended to maximize oyster production by temporarily closing specified areas for the planting of cultch (material, such as oyster shell, that furnishes a place for larval oysters (spat) to attach and grow to maturity), extending harvest opportunities later into the season by reducing the daily sack limit from 50 to 40, and prohibiting the take of oysters on Sundays during the recreational and commercial seasons.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas, and Galveston Bay in particular, have been impacted due to hurricanes (such as Hurricane Ike, September 2008), drought, and flooding, as well as high harvest pressure. The department's oyster habitat restoration efforts to date in Galveston Bay have resulted in a total of approximately 1,539 acres of sediment/silt-covered oyster habitat returned to productive habitat within the bay. Part of this restoration effort includes approximately \$10.8 million in grants and other funding that have been secured by the department to conduct cultch planting on approximately 435 acres of sediment/silt-covered oyster habitat in Galveston Bay. As a result, sound biological data indicates that the closure is needed for the periods specified in the rules.

The department received grant funds from the Coastal Impact Assistance Program in 2009 to assist in restoring some of this impacted habitat. The department will be restoring approximately 28 acres of oyster reef habitat in Galveston Bay in the spring of 2016, utilizing the remainder of these grant funds with additional funding coming from the Oyster Shell Recovery and Replacement Program and from the city of Texas City. The amendments will temporarily close these four areas to oyster harvest for a period of two years. Commercial oyster leases and other public oyster reefs will not be affected by the closures.

The Half-Moon Reef complex lies off Palacios Point in Matagorda County between Tres Palacios Bay and the eastern arm of Matagorda Bay and was formerly a highly productive oyster reef within the Lavaca-Matagorda Estuary. The reef had been degraded due to a variety of stressors, and as a result, The Nature Conservancy (TNC) secured funding to restore up to 40 acres within a 54-acre section of the historical reef footprint. The department implemented a temporary closure of this area in 2014 to allow cultch materials to become colonized by oysters and to allow the TNC to conduct post-construction monitoring of the reef recovery. The closure was scheduled to expire on November 1, 2016; however, the amendments extend the closure for an additional two years to further evaluate post-construction monitoring and recolonization of this habitat.

The Nature Conservancy has contracted with Texas A&M University - Corpus Christi to monitor the post-construction performance of the restored Half-Moon Reef over a five-year period at a cost of approximately \$700,000. The four components of this monitoring include ecological, structural, fish usage and assessing recreational angler use of the restored reef. Extending the closure of Half-Moon Reef will allow the continuation of this post-construction monitoring.

The amendment to §58.21(c), concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, closes approximately 28 acres to oyster harvesting in the Galveston Bay Conditionally Approved Area TX-6 and Galveston Bay Approved Area TX-7. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS. The amendment also extends the closure of a 54-acre area encompassing Half-Moon Reef in Matagorda Bay. The extent of the closures would be for two harvest seasons (until November 1, 2018), which will allow for repopulation of oysters in Galveston Bay (and the growth of those oysters to market size) and, in the case of Half-Moon Reef, allow for contin-

ued post-construction monitoring of this restoration project. Areas under certificates of location (sometimes referred to as private oyster leases) in TX-6 and TX-7 would not be affected by the closure. The amendment also eliminates the current closure of Hannah Reef, Middle Reef (CCA), Middle Reef, and Pepper Grove Reef, where restoration efforts have been successful and harvest can resume.

The amendment to §58.22, concerning Commercial Fishing, reduces the commercial possession limit for oysters from 50 sacks per day to 40 and closes Sundays to commercial oyster harvest during the recreational and commercial seasons (November 1 of one year through April 30 of the following year). The goal is to promote efficiency in utilizing oyster resources by providing a more stable price structure for oysters taken throughout the duration of the open season. The proposed amendment is expected to lengthen the productive part of the season, both in terms of sacks per vessel landed and effective days fished.

An analysis of the amendment's sack limit provisions found that the combination of these two measures could result in a total harvest reduction of approximately 17.1%, if fishing effort was equivalent to the 2014-15 season. Additional analysis shows that the average vessel during the 2014-15 season made only 44 trips during the 182-day season, ceased effort by mid-February, and experienced an average daily harvest of 23 sacks. By providing the opportunity to conduct trips further into the season and harvest more sacks per day, the amendments are not expected to result in a reduction in total landings over the season. Reducing the daily sack limit and eliminating harvest for one day per week could extend the effective harvest season during a time when oyster yield (meat-weight to shell-weight) is highest and more valuable to the commercial industry. The department worked closely with the Oyster Advisory Workgroup in developing the amendment.

The amendment to §58.23, concerning Non-commercial (Recreational) Fishing, would close Sunday to recreational harvest during recreational oyster season, for the same reasons discussed earlier in this preamble concerning commercial oyster season.

The department received 26 comments opposing adoption of the proposed amendments. Of those comments, twenty-five provided a reason or rationale for opposing adoption.

Five commenters opposed adoption and stated that the proposed closure of the fishery on Sundays would lead to additional restrictions on opportunity in the future and be problematic for commercial operators trying to compensate for opportunity lost as a result of bad weather. The department disagrees with the comments and responds that implicit in the management of fisheries is necessity to modulate effort based on population data, fishing effort, and other factors; therefore, there is the possibility that additional restriction might be warranted, but also the possibility (given market changes, reductions in effort, successful reintroduction programs, etc.) that harvest regulations could be liberalized in the future, as well. An analysis of the fishery since 2007 found that, in general, individual vessels on average experienced between 100 and 130 days per year of fishing effort during a season that is either 182 or 183 days long, meaning that most licensees currently do not utilize 100 percent of available fishing time. The department also responds that bad weather is an occupational reality for fishermen and that based on fishery data, the Sunday closure of the fishery can easily be offset by transferring effort to unused days; thus, rules as adopted do not affect overall harvest opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the proposed closure of the fishery on Sundays would be problematic because most marine maintenance and supply businesses are closed on Sundays, which would force licensees to miss harvest opportunities on other days in order to attend to maintenance and repair issues. The department disagrees with the comments and responds that legal fishing hours are from sunrise until 3:30 pm, which the department believes allows sufficient time on a daily basis to permit virtually all maintenance and repair activities. Further, an analysis of the fishery since 2007 found that, in general, individual vessels do not utilize all available days to fish during a season. The department also notes that equipment problems can occur on any day of the week and result in the loss of opportunity while repairs are effected. No changes were made as a result of the comments.

Five commenters opposed adoption and stated fears that proposed reduction in the daily sack limit from 50 to 40 would be permanent. The department agrees that the rules as adopted reduce the daily sack limit from 50 to 40 and that there is no expiration date placed on this change. However, the reduction in the daily sack limit should result in the availability of oysters for harvest for a longer period of time, which in turn should result in higher yields of larger oysters and accordingly higher sale prices. The department also notes that during the 2014-15 season a plurality of vessels fished 98 days of the 182-day season. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that the proposed reductions in fishing hours and sack limits were insufficient. The department disagrees with the comments and responds that the daily sack limit as adopted, in combination with the closure of the fishery on Sundays (in addition to the temporary closures of specific reef areas to all harvest) is believed to be sufficient to accomplish the department's regulatory goal, which is to redistribute harvest over a longer period of time during the season. No changes were made as a result of the comments.

The department received 20 comments supporting adoption of the proposed amendments. No group or association commented in opposition to the rules as proposed.

The Nature Conservancy commented in support of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §76.115 and §76.301, which, respectively, authorize the commission to close an area to the taking of oysters when the area is to be reseeded or restocked, and regulate the taking, possession, purchase, and sale of oysters.

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 October 4, 2016.

TRD-201605100

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: November 1, 2016

Proposal publication date: July 22, 2016

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts adopts amendments to §3.1202, concerning warning notice signs, to implement Senate Bill 97, 84th Legislature, 2015, without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6408). The section is located in Title 34, Chapter 3, Subchapter JJ, which is currently titled Cigarette and Tobacco Products Regulation, but is being changed to reflect that the scope of regulation has changed to include e-cigarettes. The comptroller has proposed to retitle the subchapter as Cigarette, E-Cigarette, and Tobacco Products Regulation.

Throughout the section, titles are amended to correct formatting.

Subsection (a) is amended to conform with Health and Safety Code, §161.084(e). Subsections (a) and (b) are amended to correct grammatical errors and to make the sections easier to read. Subsections (a), (b), (d)(1)(A), and (2)(A) are amended to add e-cigarettes where appropriate, to implement Senate Bill 97, 84th Legislature, 2015. Subsection (d)(2)(A) is amended to remove the size requirements for the additional warning notice sign for a cash register or check-out stand to promote voluntary compliance. Subsection (d)(2)(A) and (B) are reworded to make them easier to read. Subsection (e) is amended to identify

the parties responsible for posting warning notice signs for cigarettes and tobacco products, and to establish the effective date for posting warning notice signs for e-cigarettes.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to other Laws Administered by Comptroller), which provide 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, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, Chapter 161, Subchapter H (Distribution of Cigarettes or Tobacco Products), as amended by Senate Bill 97.

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 October 4, 2016.

TRD-201605102

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

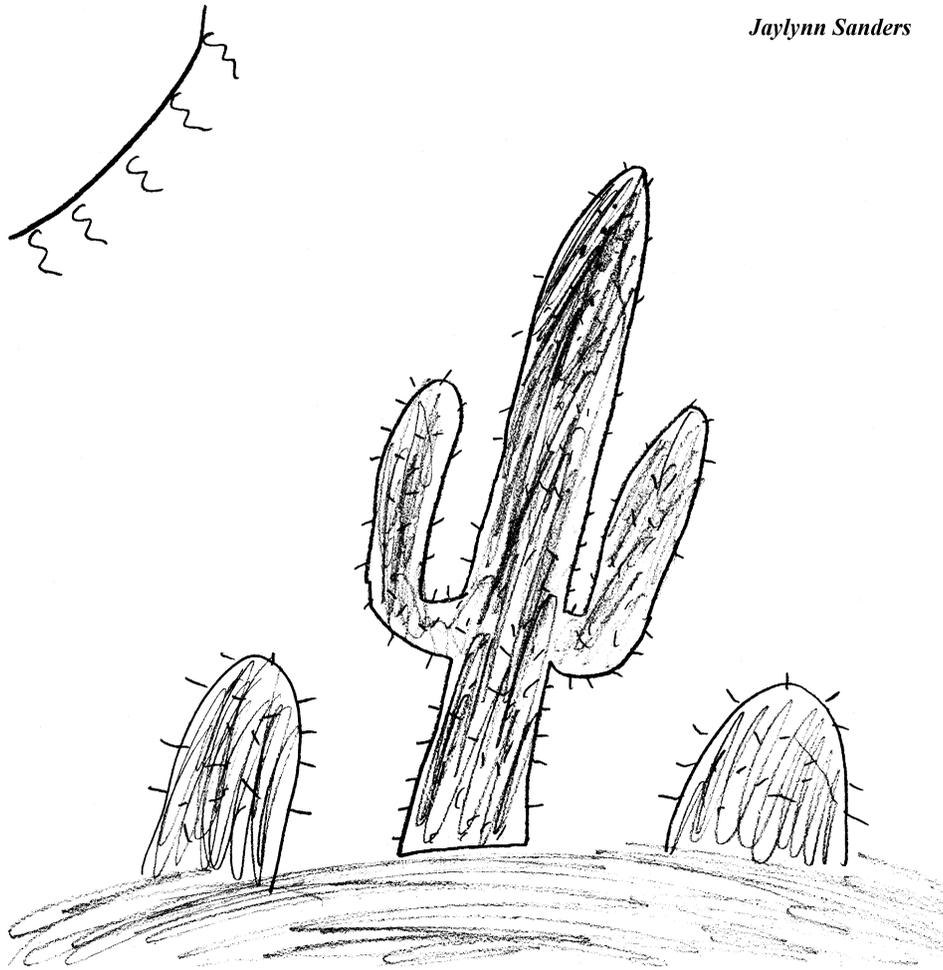
Effective date: October 24, 2016

Proposal publication date: August 26, 2016

For further information, please call: (512) 475-0387



Jaylynn Sanders



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas A&M Forest Service

Title 4, Part 12

The Texas A&M Forest Service (Agency) files this notice of its intent to review Chapter 216 of the Texas Administrative Code, Title 4, Part 12 concerning the Rural Volunteer Fire Department Assistance Program, in accordance with Texas Government Code §2001.039. An assessment will be made by the Agency as to whether the reasons for adopting or readopting the chapter continues to exist. The rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations and whether the rule reflects current procedures of the Agency.

Comments regarding the review may be submitted in writing to Robby DeWitt, Associate Director for Finance and Administration, Texas A&M Forest Service, 200 Technology Way, Suite 1120, College Station, Texas 77845-3424, or by facsimile transmission to (979) 458-7303. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

TRD-201605135

Robby DeWitt

Associate Director for Finance and Administration

Texas A&M Forest Service

Filed: October 7, 2016



Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) proposes to review Chapter 53 of TRS' rules, which is found in Title 34, Part 3 of the Texas Administrative Code. Chapter 53 concerns certification by companies who offer voluntary 403(b) investment options through salary reduction agreements between public school employees and their local employers.

TRS will review Chapter 53 in accordance with the requirements of §2001.039 of the Texas Government Code, which concerns the review of existing rules. TRS asserts that the reasons for adopting Chapter 53 continue to exist. TRS will review the chapter to update and improve the rules as needed. TRS will also file a rule review plan for Chapter 53 with the *Texas Register*.

Written comments pertaining to this proposed rule review must be submitted to Brian Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is March 31, 2017. (Please note this deadline supersedes the deadline indicated in the notice of rule review published in the October 14, 2016 issue of the *Texas Register*). In addition, the public will be given an opportunity to comment on the proposed rule review at a meeting of the TRS Board of Trustees (board) or the Policy Committee of the board or both.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

The following chapter is available for review at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=34&pt=3&ch=53&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=3&ch=53&rl=Y):

Chapter 53. Certification by Companies Offering Qualified Investment Products.

TRD-201605190

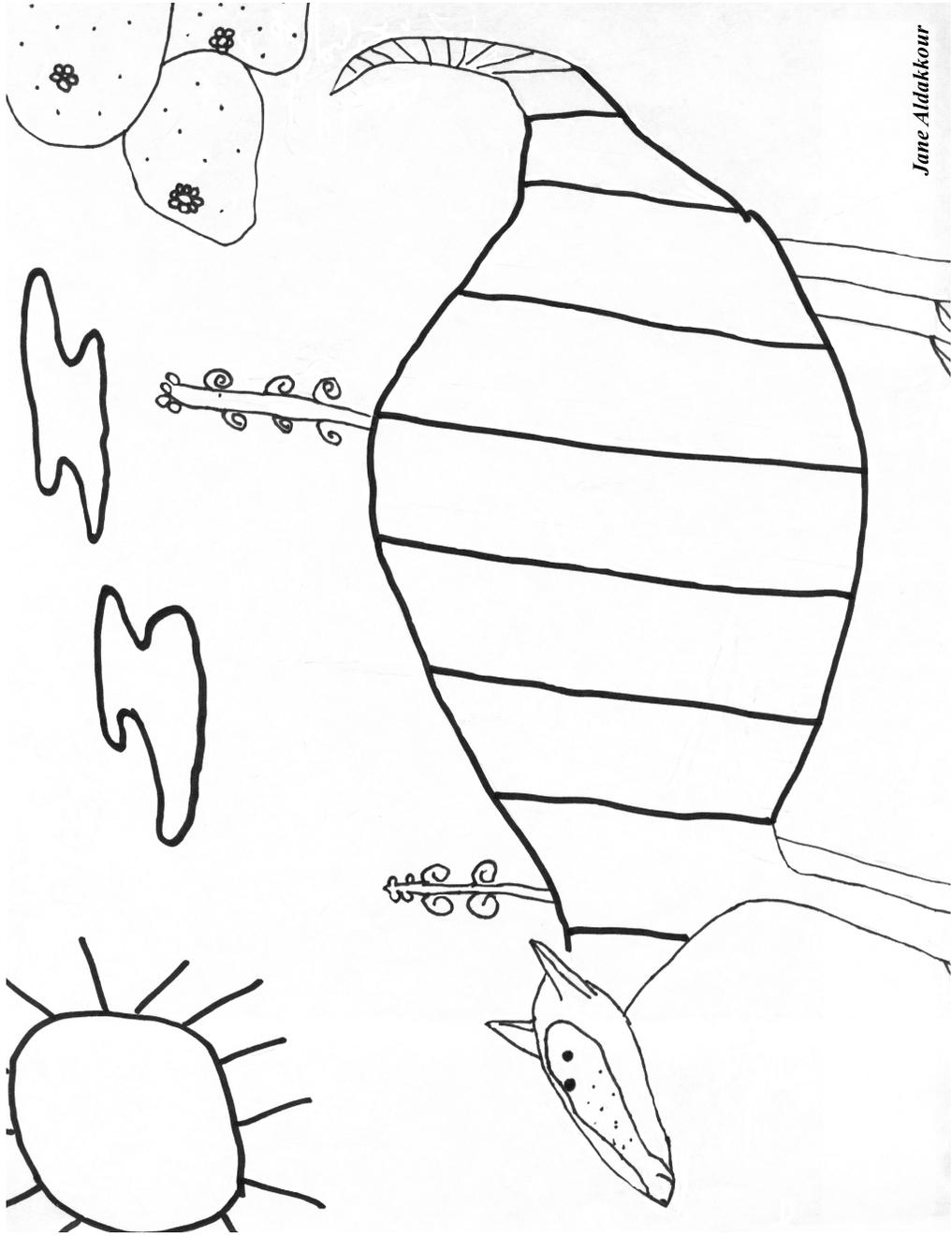
Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: October 10, 2016





Jane Aldakkour

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §354.1667(e)(10)(B)

PY3 QISMC Goal Setting for Category 3 P4P Outcomes		
Direction	Baseline	PY3 Goal
Positive (higher rates indicate improvement)	Below the MPL	$MPL + .15*(HPL - MPL)$
	Between the MPL & HPL	the greater of: baseline + $.25*(HPL - baseline)$; or baseline + $.10*(HPL - MPL)$ †
	Above the HPL	the lesser of: baseline + $.125*(1-baseline)$; or baseline + $.10*(HPL - MPL)$ †
Negative (lower rates indicate improvement)	Above the MPL	$MPL -.15*(MPL - HPL)$
	Between the MPL & HPL	the lesser of: baseline - $.25*(baseline - HPL)$; or baseline - $.10*(MPL - HPL)$ †
	Below the HPL	the greater of: baseline - $.125*(baseline)$; or baseline - $.10*(MPL - HPL)$ †
† Goal set using the improvement floor		

Figure: 1 TAC §354.1667(e)(10)(D)

PY3 IOS - Survey Goal Setting for Category 3 P4P Outcomes		
Direction	Reporting Scenario	PY3 Goal
Positive (higher rates indicate improvement)	Scenario 1	Posttest baseline + $.125*(posttest\ baseline - pretest\ baseline)$
	Scenario 2 & Scenario 3	Baseline + $.125*(max\ score - baseline)$
Negative (lower rates indicate improvement)	Scenario 1	Posttest baseline - $.125*(pretest\ baseline - posttest\ baseline)$
	Scenario 2 & Scenario 3	Baseline - $.125*(baseline - min\ score)$

Figure: 1 TAC §354.1667(e)(11)(B)

Percent of Goal Achieved for Category 3 P4P Outcomes			
PY	Milestone	Positive Direction (higher rates indicate improvement)	Negative Direction (lower rates indicate improvement)
PY3	DY6A AM-3.x	(PY3 achieved - PY1 goal or equivalent)/(PY3 goal - PY1 goal or equivalent)	(PY1 goal or equivalent - PY3 achieved)/(PY1 goal or equivalent - PY3 goal)
PY4	Carry forward of DY6A AM-3.x	(PY4 achieved - PY1 goal or equivalent)/(PY3 goal - PY1 goal or equivalent)	(PY1 goal or equivalent - PY4 achieved)/(PY1 goal or equivalent - PY3 goal)

Figure: 40 TAC §748.2801

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child of any age, 30 minutes. (B) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.
(5) Mechanical restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.

Figure: 40 TAC §748.2805

Type of Emergency Behavior Intervention	The maximum length of time:
(1) Short personal restraint	May not be exceeded.
(2) Personal restraint	May not be exceeded.
(3) Emergency medication	Not applicable.
(4) Seclusion	<p>May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist, psychologist, or physician with written clinical justification:</p> <p>(A) Indicating that the emergency situation continues to exist; and</p> <p>(B) For the length of time the psychiatrist, psychologist, or physician permits the child to be secluded, which must not exceed four hours.</p>
(5) Mechanical restraint	<p>May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist with written clinical justification:</p> <p>(A) Indicating that the emergency situation continues to exist; and</p> <p>(B) For the length of time the psychiatrist permits the child to be restrained, which must not exceed four hours.</p>

Figure: 40 TAC §748.2901(a)

Types of Emergency Behavior Intervention	Circumstances that trigger a review:
(1) Short personal restraint	Not applicable, because short personal restraints are not monitored.
(2) Personal restraint	Except as provided by subsection (b) of this section: (A) The same child is personally restrained (i) four times within a seven-day period; or (ii) more than 12 times in a single 30-day period; or (B) The same child is personally restrained more often than the written order or service planning team recommendation allows.
(3) Emergency medication	Emergency medication is used on the same child three times in a 30-day period.
(4) Seclusion	(A) The seclusion of the same child continues for more than 12 hours; or (B) The same child is secluded three times in a seven-day period.
(5) Mechanical restraint	(A) The mechanical restraint of the same child continues for more than three hours; or (B) The same child is mechanically restrained three times in a seven-day period.

Figure: 40 TAC §749.2281

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child of any age, 30 minutes. (B) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.

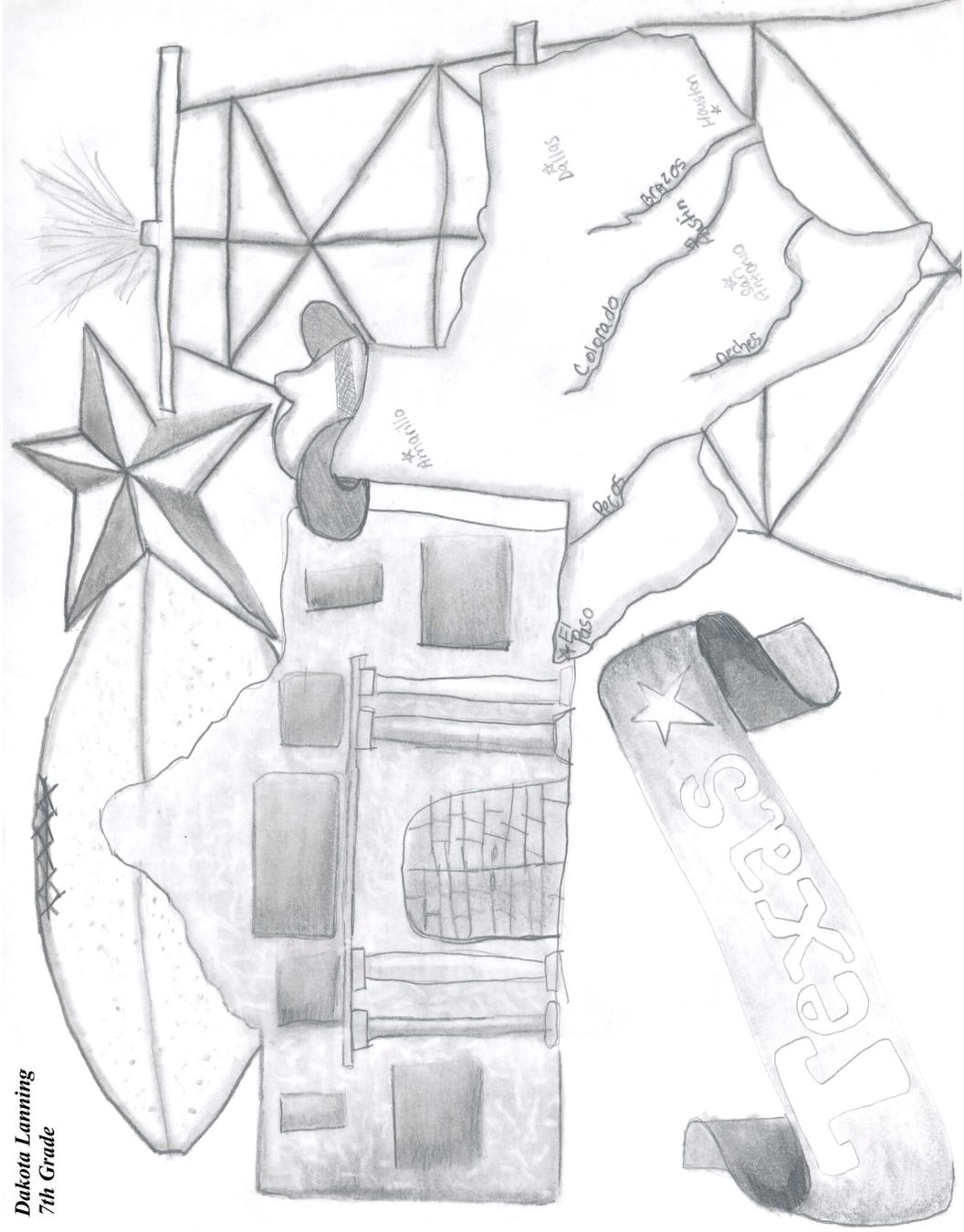
Figure: 40 TAC §749.2283

Type of Emergency Behavior Intervention	The maximum length of time:
(1) Short personal restraint	May not be exceeded.
(2) Personal restraint	May not be exceeded.
(3) Emergency medication	Not applicable.

Figure: 40 TAC §749.2331(a)

Types of Emergency Behavior Intervention	Circumstances that trigger a review:
(1) Short personal restraint	Not applicable, because short personal restraints are not monitored.
(2) Personal restraint	Except as provided by subsection (b) of this section: (A) The same child is personally restrained: (i) four times within a seven-day period; or (ii) more than 12 times in a single 30-day period; or (B) The same child is personally restrained more often than the written order or service planning team recommendation allows.
(3) Emergency medication	Emergency medication is used on the same child three times in a 30-day period.

Dakota Lanning
7th Grade



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Bend Workforce Development Board

Request for Proposals

Using the Request for Proposals (RFP) method of procurement, the Coastal Bend Workforce Development Board, d.b.a. Workforce Solutions of the Coastal Bend (WFSCB) is soliciting responses from qualified individuals or firms for the Management and Operations of the Workforce Solutions of the Coastal Bend Career Center System, as well as a procurement for the Direct Child Care Services Management for Fiscal Year 2017. The Coastal Bend region consists of the following 12 counties: Aransas, Bee Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, and San Patricio.

The Workforce Services Delivery System incorporates at a minimum, general workforce information and referral; customer, employer, and job seeker services; customer intake, program eligibility and assessment; case management; enrollment into education and training programs; job placement; career counseling; support services; follow-up and retention services as funded by the Workforce Innovation and Opportunity Act (WIOA: Youth, Adult, and, Dislocated Worker), Temporary Assistance to Needy Families (TANF)/Choices, Supplemental Nutrition Assistance Program (SNAP), Employment and Training, and Wagner-Peyser for the 12-county Coastal Bend area.

The Direct Child Care Services provides child care services to eligible families in need of child care for their children. The provision of child care services will be delivered by the Contractor co-located at the workforce centers. Management of services will include, at a minimum, management of funds, intake, eligibility and management of services for parents and self-arranged providers; assessment and referral to other related services to families and children. This procurement may include provider management functions.

A Pre-Proposal Conference will be held on both contract services on Tuesday, October 11, 2016. The purpose of the Pre-Proposal Conference is to explain the RFPs and answer other questions. The Pre-Proposal Conference will be held at the Staples Workforce Center of the Coastal Bend, 520 North Staples Street, Corpus Christi, TX 78401. The conference meeting times are as follows:

RFP for the Management and Operations of Career Center System - 10:00 a.m. (CST)

RFP for Direct Child Care Services Management - 1:30 p.m. (CST)

Attendance at this conference is not mandatory, but it is strongly recommended. However, for those individuals that are unable to attend the conference, you may participate via teleconference. To register for the teleconference for the Management and Operations of the Career Centers Meeting, go to:

<https://global.gotomeeting.com/join/933099981>. To listen to the presentation and ask questions, dial in using your phone at: +1 (872) 240-3212, Access Code: 933-099-981.

To register for the teleconference for the Direct Child Care Services Management Meeting, go to: <https://global.gotomeeting/join/813210493>. To listen to the presentation and ask questions,

dial in using your phone at: +1 (872) 240-3212, Access Code: 813-210-493.

Copies of the RFP will be available on Wednesday, September 28, 2016. Interested parties may obtain a copy of the RFP by contacting Robert Ramirez at (361) 885-3013, or robert.ramirez@workforcesolutionscb.org. Interested parties can also access the RFP on-line at our website at: www.workforcesolutionscb.org.

The RFP process consists of the submission of an application and a proposal. *The deadline for receipt of applications is November 28, 2016, 4:00 p.m. (CST) and Proposals is February 15, 2017, 4:00 p.m. (CST).*

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aid and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing or speech impaired customers may contact Relay Texas: 1-800-735-2989 (TDD) and 1-800-735-2988 or 7-1-1 (voice). Historically Underutilized Businesses (HUB's) are encouraged to apply.

TRD-201605132

Robert R. Ramirez

Procurement and Contracts Specialist

Coastal Bend Workforce Development Board

Filed: October 7, 2016

Comptroller of Public Accounts

Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") entered into an amendment for the Management and Regulatory Services for the Texas Conservation Plan for the Dunes Sagebrush Lizard ("Agreement") resulting from Comptroller's Request for Proposals 218d ("RFP 218d"). The Agreement was awarded as authorized by Chapters 403, 2155 and 2156 of the Texas Government Code.

Notice of issuance of RFP 218d was published in the February 12, 2016, issue of *Texas Register* (41 TexReg 1144). Notice of Award was published in the March 18, 2016, issue of *Texas Register* (41 TexReg 2204).

The Amendment to the respective Agreement has been entered into with the following:

BIO-WEST, Inc., 1812 Central Commerce Court, Round Rock, Texas 78664, is extended by Amendment No. 1.

The original term of the Agreement is March 2, 2016, through August 31, 2017. The Amendment, the subject of this notice, extends the term of the Agreement through September 30, 2017, with two (2) optional one year renewal periods.

The total maximum amount of the contract is \$869,406.00. The term of the contract is October 6, 2016, through September 30, 2017, with two (2) optional one year renewal periods.

TRD-201605229

Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: October 12, 2016

Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 11, 2016

◆ ◆ ◆
Notice of Contract Award

The Texas Comptroller of Public Accounts announces the award of a bank loan investment management services contract to Shenkman Capital Management Inc, 461 Fifth Avenue, 22nd Floor, New York, NY 10017, under Request for Proposals No. 216b ("RFP"). The total amount of the contract is management fees of 0.40% per annum on AUM up to \$250 million; and 0.35% per annum on AUM over \$250 million. The term of the contract is September 30, 2016 through August 31, 2021, with option to renew for two (2) additional one (1) year periods, one (1) year at a time.

The notice of the RFP was published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3933).

TRD-201605125
Carolyn Greenwalt
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: October 5, 2016

◆ ◆ ◆
Notice of Contract Award

The Texas Comptroller of Public Accounts ("Comptroller") announces the award of a loan to Houston Community College, 3100 Main Street, Suite 12C06, Houston, Texas 77002, as a result of Request for Applications (RFA) No. BE-G14-2015 for energy-related cost-reduction retrofits under the Comptroller's State Energy Conservation Office LoanSTAR Revolving Loan Program. The total amount of the loan is not to exceed \$7,056,096.00. The term of the loan agreement is October 7, 2016 until repaid in full.

The notice of request for applications was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2592).

TRD-201605211
Joseph Madden
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: October 11, 2016

◆ ◆ ◆
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 10/17/16 - 10/23/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/17/16 - 10/23/16 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-201605213

◆ ◆ ◆
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 November 21, 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 November 21, 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: ASFIYA BUSINESS INCORPORATED dba Beasley Food Mart; DOCKET NUMBER: 2016-1215-PST-E; IDENTIFIER: RN102233871; LOCATION: Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2), (c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the underground storage tank (UST) system, and failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to conduct detailed reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$5,581; ENFORCEMENT COORDINATOR: Keith

Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2016-0765-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), TCEQ Order Docket Number 2013-1835-AIR-E, Ordering Provisions Number 3, New Source Review Permit Numbers 36644, PSDTX903M5, and N007M1, Special Conditions Number 1, Federal Operating Permit Number O2551, Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$315,000; Supplemental Environmental Project offset amount of \$156,700; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Benjamin Gonzalez; DOCKET NUMBER: 2016-1025-AIR-E; IDENTIFIER: RN108266412; LOCATION: Florence, Williamson County; TYPE OF FACILITY: gunite facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a source of air emissions; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: Century Land Holdings II, LLC; DOCKET NUMBER: 2016-0958-EAQ-E; IDENTIFIER: RN105625008; LOCATION: Austin, Williamson County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §213.4(k) and §213.5(f)(2)(B), Water Pollution Abatement Plan Number 11-15061201, and Organized Sewage Collection System Plan Number 11-15061202, Standard Conditions Number 12, by failing to immediately suspend all regulated activities near a sensitive feature discovered during construction until receiving executive director approval for the methods proposed to protect a sensitive feature; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: Channelview Independent School District; DOCKET NUMBER: 2016-1294-PST-E; IDENTIFIER: RN101914232; LOCATION: Channelview, Harris County; TYPE OF FACILITY: fleet refueling facility; 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: \$7,125; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2016-0828-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County; TYPE OF FACILITY: polyethylene manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1310, Special Terms and Conditions Number 9, and New Source Review Permit Number 19394, Special Conditions Number 1, by failing to comply with the maximum allowable emissions; PENALTY: \$310,500; Supplemental Environmental Project offset amount of \$124,200; ENFORCEMENT COORDINATOR: Raima Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of Austin; DOCKET NUMBER: 2016-0886-AIR-E; IDENTIFIER: RN100219872; LOCATION: Austin, Travis County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 17380 and PSDTX717M2, Special Conditions Number 14, Federal Operating Permit Number O22, Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to maintain a water-to-fuel ratio of 0.44 or greater except for startup/shutdown periods; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(8) COMPANY: City of Boyd; DOCKET NUMBER: 2016-0979-MWD-E; IDENTIFIER: RN101721652; LOCATION: Boyd, Wise County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010131001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$16,250; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Detroit; DOCKET NUMBER: 2016-0382-PWS-E; IDENTIFIER: RN101389831; LOCATION: Detroit, Red River County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: \$411; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: City of Ladonia; DOCKET NUMBER: 2016-1308-PWS-E; IDENTIFIER: RN101413136; LOCATION: Ladonia, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: \$140; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Moulton; DOCKET NUMBER: 2016-1241-PWS-E; IDENTIFIER: RN101391787; LOCATION: Moulton, Lavaca 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; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2013 -December 31, 2015 monitoring period; 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy requirements of the Consumer Confidence Report distributed to the customers of the facility for 2014; and 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of each pub-

lic notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the third quarter of 2015; PENALTY: \$799; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200 Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: City of River Oaks; DOCKET NUMBER: 2016-1112-PWS-E; IDENTIFIER: RN101203842; LOCATION: River Oaks, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; PENALTY: \$1,284; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Temple; DOCKET NUMBER: 2016-0415-PWS-E; IDENTIFIER: RN101249308; LOCATION: Temple, Bell 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 §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 30 sample sites, have the samples analyzed, and report the results to the executive director; PENALTY: \$3,442; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: City of Trinidad; DOCKET NUMBER: 2016-1246-PWS-E; IDENTIFIER: RN101386514; LOCATION: Trinidad, Henderson County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual event using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: \$226; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Consolidated Communications Services Company; DOCKET NUMBER: 2016-1357-PST-E; IDENTIFIER: RN101763589; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: office building with an emergency power generator; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; and 30 TAC §334.49(c)(4)(C), and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$8,182; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Double Diamond Utilities Company; DOCKET NUMBER: 2016-0733-MWD-E; IDENTIFIER: RN105132401; LOCATION: Gordonville, Grayson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014783001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,625; ENFORCEMENT COORDINATOR:

Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: EL SAUZ WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0313-PWS-E; IDENTIFIER: RN101440311; LOCATION: Roma, Starr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average, and failing to provide the public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the MCL for TTHM for the third quarter of 2015; 30 TAC §290.117(c)(2)(B), (h) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2015 monitoring period; and 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail to the TCEQ a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the June 1, 2014 - September 30, 2014 monitoring period; PENALTY: \$434; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: FARMERS COOPERATIVE SOCIETY NUMBER 1 OF JAYTON, TEXAS; DOCKET NUMBER: 2016-1274-PST-E; IDENTIFIER: RN102548492; LOCATION: Jayton, Kent County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,251; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Fort Bend County Municipal Utility District Number 58; DOCKET NUMBER: 2016-1047-MWD-E; IDENTIFIER: RN104305867; LOCATION: Houston, Fort Bend 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 WQ0014520001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$12,937; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Gulfwest Waste Solutions, LLC; DOCKET NUMBER: 2016-0924-AIR-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: waste treatment and disposal; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3058, General Terms and Conditions (GTC), by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3058, GTC, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period;

PENALTY: \$18,450; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: H Sunny Incorporated; DOCKET NUMBER: 2016-0791-PST-E; IDENTIFIER: RN101570802; LOCATION: Benbrook, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$7,256; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Harris County Municipal Utility District Number 530; DOCKET NUMBER: 2016-1169-MWD-E; IDENTIFIER: RN106850118; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015139001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,375; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Harrold Water Supply Corporation; DOCKET NUMBER: 2016-0706-PWS-E; IDENTIFIER: RN101440675; LOCATION: Harrold, Wilbarger County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.43(c)(4), by failing to equip the facility's elevated storage tank with a liquid level indicator located at the tank site; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.43(e), by failing to install all potable water storage tanks and pressure maintenance facilities in a lockable building or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; and 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's elevated storage tank that is designed in strict accordance with current American Water Works Association standards; PENALTY: \$620; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(24) COMPANY: Imperial Group Manufacturing, Incorporated; DOCKET NUMBER: 2016-1010-PWS-E; IDENTIFIER: RN100802495; LOCATION: Decatur, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control throughout the distribution system; 30 TAC §290.46(e)(4)(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; and 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, disinfection information,

microbiological sample results, and a chemical analysis report of a representative sample of water from the well; PENALTY: \$897; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: KT CORPORATION dba Lamp Post; DOCKET NUMBER: 2016-1219-PST-E; IDENTIFIER: RN101665818; LOCATION: Whitney, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$4,500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: KYLE'S KWIK STOP #5 LLC; DOCKET NUMBER: 2016-1150-PST-E; IDENTIFIER: RN106390388; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; and 30 TAC §334.605(a), by failing to ensure that a certified Class A and Class B operator is re-trained within three years of their last training date; PENALTY: \$6,404; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: Living Rock Academy; DOCKET NUMBER: 2016-0679-EAQ-E; IDENTIFIER: RN108932682; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: commercial school project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: LUCKY RIVER, INCORPORATED dba Stop N Save; DOCKET NUMBER: 2016-1093-PST-E; IDENTIFIER: RN102788486; LOCATION: River Oaks, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$3,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: MAHEEN LLC dba Rosharon Food Mart; DOCKET NUMBER: 2016-1072-PST-E; IDENTIFIER: RN102474509; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.42(a) and §334.49(a)(2) and (c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years, and failing to maintain all components of the UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to

automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; PENALTY: \$9,948; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Marco A. Esquivel Ojeda; DOCKET NUMBER: 2016-1598-WOC-E; IDENTIFIER: RN109153288; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: landscape irrigation business; 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.

(31) COMPANY: MOUNTAIN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0845-PWS-E; IDENTIFIER: RN101452605; LOCATION: South Mountain, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: Mullin Independent School District; DOCKET NUMBER: 2016-0916-PWS-E; IDENTIFIER: RN101256550; LOCATION: Mullin, Mills 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 timely 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 the quarter for the second through fourth quarters of 2015, and by failing to timely issue public notification and submit a copy of the notification to the ED regarding the failure to submit a DLQOR for the second quarter of 2015; 30 TAC §290.117(c)(2)(B) and (C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - December 31, 2015 monitoring period; PENALTY: \$960; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: Nahia Barsoum dba Nichols Mobil Station; DOCKET NUMBER: 2016-0949-PST-E; IDENTIFIER: RN101443984; LOCATION: Royse City, Rockwall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$3,375; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Nain Mondragon; DOCKET NUMBER: 2016-1607-WOC-E; IDENTIFIER: RN109213389; LOCATION: Plano, Collin County; TYPE OF FACILITY: irrigation installation; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDI-

NATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(35) COMPANY: NTA ENTERPRISES, INCORPORATED dba Lucky 7 Quick Stop 3; DOCKET NUMBER: 2016-1171-PST-E; IDENTIFIER: RN101536084; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$4,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: Owens Corning Insulating Systems, LLC; DOCKET NUMBER: 2016-1065-AIR-E; IDENTIFIER: RN100223585; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: insulation manufacturer; RULES VIOLATED: 30 TAC §101.211(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to notify the commission within ten days, or as soon as practicable, prior to any scheduled maintenance, startup, or shutdown activity that is expected to cause an unauthorized emission; 30 TAC §116.115(b)(2)(F) and (c), THSC, §382.085(b), New Source Review Permit Number 6093, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 220731 no later than 24 hours after the discovery of the emissions event; PENALTY: \$17,482; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Parker Distributing Company; DOCKET NUMBER: 2016-0868-MLM-E; IDENTIFIER: RN109218073; LOCATION: Canyon, Randall County; TYPE OF FACILITY: chemical processing and distributing facility; RULES VIOLATED: 30 TAC §331.3(a) and TWC, §26.121(a)(1), by failing to prevent the disposal of industrial solid waste (ISW) into an unauthorized injection; 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; and 30 TAC §335.4 and TWC, §26.121(a)(1), by failing to not cause, suffer, allow, or permit the unauthorized collection, handling, storage, processing, or disposal of ISW; PENALTY: \$13,125; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(38) COMPANY: Pejoma, LLC dba 281 Korner Store; DOCKET NUMBER: 2016-0933-PST-E; IDENTIFIER: RN101912053; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,504; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(39) COMPANY: PINEDALE CORPORATION dba Sammys; DOCKET NUMBER: 2016-1103-PST-E; IDENTIFIER: RN101840619; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$4,500; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(40) COMPANY: sewa ro Incorporated dba Bardwell Food Mart; DOCKET NUMBER: 2016-1044-PST-E; IDENTIFIER: RN102347473; LOCATION: Bardwell, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$3,563; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(41) COMPANY: Simin Enterprises Incorporated dba Jonestown Exxon; DOCKET NUMBER: 2016-1268-PST-E; IDENTIFIER: RN102451556; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$3,000; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(42) COMPANY: SS AND SY INVESTMENTS, INCORPORATED dba Newark Food Mart; DOCKET NUMBER: 2016-1478-PST-E; IDENTIFIER: RN101819472; LOCATION: Newark, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$4,125; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: St. Paul Water Supply Corporation; DOCKET NUMBER: 2016-0121-MWD-E; IDENTIFIER: RN101518421; LOCATION: St. Paul, San Patricio 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 (TPDES) Permit Number WQ0014119001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0014119001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$11,550; Supplemental Environmental Project offset amount of \$4,620; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(44) COMPANY: Texas Quality Products, LLC; DOCKET NUMBER: 2016-1224-WQ-E; IDENTIFIER: RN107665929; LOCATION: Eagle Lake, Colorado County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(45) COMPANY: UIRC-GSA Cotulla TX, LLC; DOCKET NUMBER: 2016-1117-PWS-E; IDENTIFIER: RN103779542; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B) and (C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples

analyzed, and report the results to the executive director (ED) for the January 1, 2012 - December 31, 2014, monitoring period, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2012 - December 31, 2014, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report to the ED for the first through third quarters of 2014, and the third quarter of 2015, and regarding the failure to collect repeat coliform samples for the month of February 2014; PENALTY: \$975; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(46) COMPANY: Union Carbide Corporation; DOCKET NUMBER: 2016-0123-AIR-E; IDENTIFIER: RN102181526; LOCATION: Seadrift, Calhoun County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 2023 and PSDTX118M4, Special Conditions (SC) Number 3, Federal Operating Permit (FOP) Number O2026, Special Terms and Conditions (STC) Number 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with permit monitoring requirements; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 2023 and PSDTX118M4, SC Numbers 3 and 4, FOP Number O2026, STC Number 8, and THSC, §382.085(b), by failing to comply with an emissions limit; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2026, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$6,681; Supplemental Environmental Project offset amount of \$2,672; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(47) COMPANY: Village of Vinton; DOCKET NUMBER: 2016-0018-WQ-E; IDENTIFIER: RN105592885; LOCATION: Vinton, El Paso County; TYPE OF FACILITY: municipal small separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit associated with small municipal separate storm sewer systems; PENALTY: \$21,375; Supplemental Environmental Project offset amount of \$17,100; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(48) COMPANY: W.B. Kibler Construction Company, Limited; DOCKET NUMBER: 2016-1122-WQ-E; IDENTIFIER: RN108231184; LOCATION: Granbury, Hood County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(2) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150017123, Part VII, Standard Permit Conditions Number 8 and Part III, Section F(6)(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR150017123, Part III, Section F(2)(c)(ii)(A), by failing to maintain best management practices designed to minimize pollutants in stormwater associated with construction activity; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR150017123, Part III, Section G(2), by failing to initiate stabilization of disturbed areas as soon as practicable when soil disturbing activities have permanently ceased; PENALTY: \$2,151; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(49) COMPANY: Wilbert Vaults of Houston, L.L.C.; DOCKET NUMBER: 2016-1170-WQ-E; IDENTIFIER: RN100917442; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ General Permit Number TXG111238, Part III, Permit Requirements, Section A.1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b), and TCEQ General Permit Number TXG111238, Part IV, Standard Permit Conditions Number 7.a., by failing to collect and analyze effluent samples at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TCEQ General Permit Number TXG111238, Part IV, Standard Permit Conditions Number 7.f., by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$4,830; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(50) COMPANY: Wilsonart LLC; DOCKET NUMBER: 2016-1163-AIR-E; IDENTIFIER: RN100215631; LOCATION: Temple, Bell County; TYPE OF FACILITY: laminate 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 O1022, General Terms and Conditions, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$2,626; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(51) COMPANY: YOAKUM, INCORPORATED dba Get N Go Food Mart 2; DOCKET NUMBER: 2016-1000-PST-E; IDENTIFIER: RN101745214; LOCATION: Yoakum, Dewitt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,629; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(52) COMPANY: ZERIQ MOMIN INCORPORATED dba Quality Star Food Mart; DOCKET NUMBER: 2016-1393-PST-E; IDENTIFIER: RN105683619; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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: \$3,375; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201605207

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 11, 2016



Enforcement Order

An agreed order was adopted regarding Savyan, Inc. dba 7 days, Docket No. 2016-0332-PST-E on October 11, 2016 assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, Staff Attorney at

(512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201605226

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 12, 2016



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls

Proposed Air Quality Registration Number 142465

APPLICATION. Knife River Corporation - South, 4825 Romeda Road, Beaumont, Texas 77705-1198, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 142465 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 8477 Boyd Road, Bryan, Brazos County, Texas 77807. This link 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=30.610782&lng=-96.480214&zoom=13&type=r>. This application was submitted to the TCEQ on August 29, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on September 13, 2016.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Monday, November 14, 2016, at 6:00 p.m.

Brazos County VFW Post 4692

794 North Harvey Mitchell Parkway

Bryan, Texas 77807-1013

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Waco Regional Office, located at 6801 Sanger Ave Ste 2500, Waco, Texas 76710-7826, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Knife River Corporation - South, 4825 Romeda Road, Beaumont, Texas 77705-1198, or by calling Mr. Daniel Eberhard, Environmental Manager at (409) 842-2100.

Notice Issuance Date: October 6, 2016

TRD-201605218

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 12, 2016



Notice of Correction to Agreed Order Number 11

In the April 15, 2016, issue of the *Texas Register* (41 TexReg 2785), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 11 for INEOS USA LLC. The reference to penalty should be corrected to read: "PENALTY: \$14,250; Supplemental Environmental Project offset amount of \$5,700..."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201605208

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 11, 2016



Notice of Correction to Agreed Order Number 17

In the September 2, 2016 issue of the *Texas Register* (41 TexReg 6800), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 17 for Kolkhorst Petroleum Company dba Rattlers Country Store 6. The reference to rules violated should be corrected to read: "30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and..."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201605209

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 11, 2016



Notice of Hearing

JASON W. DANIELS

SOAH Docket No. 582-17-0494

TCEQ Docket No. 2016-1619-LIC

APPLICATION.

Jason W. Daniels, 106 South Maple Street, New Boston, Texas 75570, has applied with the Texas Commission on Environmental Quality (TCEQ) for a Landscape Irrigator License. The Executive Director denied Mr. Daniels's application for cause. Mr. Daniels has requested a formal hearing on the Executive Director's decision.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing on this application at:

10:00 a.m. - November 22, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Daniels should be issued a Landscape Irrigator License. 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. **If Jason W. Daniels fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled and that the appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. General information about SOAH can be

found on its website at <http://www.soah.texas.gov/index.asp>, or by calling (512) 475-4993.

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 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: October 6, 2016

TRD-201605217

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 12, 2016



Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, 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. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 21, 2016**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the ap-

plicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711 3087 and must be **received by 5:00 p.m. on November 21, 2016**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: CHAKLASHIA ENTERPRISES, INC. d/b/a H & Y Shell; DOCKET NUMBER: 2016-0239-PST-E; TCEQ ID NUMBER: RN101882975; LOCATION: 260 East Highway 6, Alvin, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of a detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(iii)(I), by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.45(c)(3)(A), by failing to securely anchor all emergency shutoff valves (also known as shear or impact valves) at the bases of the dispensers; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.241(b)(3)(J), by failing to perform and complete all Stage II vapor recovery system decommissioning activities; PENALTY: \$9,500; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201605204

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 11, 2016



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 **November 21, 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 November 21, 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: ARNY BUSINESS LLC d/b/a 288 Angleton Food Mart; DOCKET NUMBER: 2016-0329-PST-E; TCEQ ID NUMBER: RN101440758; LOCATION: 22602 N Highway 288B, Angleton, Brazoria 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(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: \$7,688; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: CRAFTMASTERS POWDER COATING, INC.; DOCKET NUMBER: 2015-1417-AIR-E; TCEQ ID NUMBER: RN105508436; LOCATION: 1219 South Loop Drive, Waco, McLennan County; TYPE OF FACILITY: abrasive blasting facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to operating a source of air emissions; PENALTY: \$1,500; STAFF ATTORNEY: Elizabeth Harkrider, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Federal Aviation Administration; DOCKET NUMBER: 2016-0599-PST-E; TCEQ ID NUMBERS: RN102858727 and RN102956729; LOCATION: Bush Intercontinental Airport, 2800 North Terminal Road, airport runway 26L-JYV (Facility 1), 27-GHI (Facility 2), Houston, Harris County; TYPE OF FACILITY: two underground storage tank (UST) systems; RULES VIOLATED: TWC §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with the UST system (Facility 1); and TWC §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with the UST system (Facility 2); PENALTY: \$7,126; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: James McIntire d/b/a Holiday Trav L Park; DOCKET NUMBER: 2015-1751-PWS-E; TCEQ ID NUMBER: RN101197895; LOCATION: 11490 West United States Highway 90, Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for a routine distribution col-

iform sample; 30 TAC §290.110(e)(4)(A) and (f)(3), 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; 30 TAC §290.117(c)(2)(B) and (i)(1), and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED by the tenth day of the month following the end of a monitoring period, and by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper samples; 30 TAC §290.122(c)(2)(A) and (f), by failing provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; and 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED; PENALTY: \$2,844; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: Kerry F. Jones dba Gasoline Alley; DOCKET NUMBER: 2016-0586-PST-E; TCEQ ID NUMBER: RN101742658; LOCATION: 615 East Austin Street, Kermit, Winkler 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); and 30 TAC §334.603(b)(2), by failing to maintain a list of all Class C operators who have been trained for the facility; PENALTY: \$6,000; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(6) COMPANY: Maria E. Rosas; DOCKET NUMBER: 2015-1836-MSW-E; TCEQ ID NUMBER: RN106494479; LOCATION: west side of 5th Street, approximately 285 feet northwest from the intersection of Gonzales Street and 5th Street, Fort Hancock, Hudspeth County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ AO Docket Number 2013-0583-MSW-E, Ordering Provision Number 2.b., by causing, suffering, allowing, permitting the unauthorized disposal of municipal solid waste; PENALTY: \$12,000; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201605205

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 11, 2016



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 **November 21, 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 November 21, 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: GLOBAL NEW MILLENIUM PARTNERS, LTD.; DOCKET NUMBER: 2016-0418-PST-E; TCEQ ID NUMBER: RN102782851; LOCATION: 1096 Alabama Street, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and real property; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition or within 30 days from the date on which the owner or operator first became aware of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$9,187; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Hillger Ventures, Inc.; DOCKET NUMBER: 2015-1012-LII-E; TCEQ ID NUMBER: RN107960320; LOCATION: 6111 Weiland Road, Weatherford, Parker County; TYPE OF FACILITY: irrigator business; RULE VIOLATED: 30 TAC §344.70(b), by failing to include the licensed irrigator's number, in the form of "LI__", and the name of the licensed irrigator in all forms of written and electronic advertisements for irrigation services; PENALTY: \$250; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Jose Damyan D. Valadez; DOCKET NUMBER: 2016-0511-LII-E; TCEQ ID NUMBER: RN105827331; LOCATION: 2205 Trails End Drive, Georgetown, Williamson County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC §37.003 and 30 TAC §30.5(b), by failing to refrain from advertising or representing to the public that he can perform services for which a license is required unless he holds a current license, or unless he employs an individual who holds a current license; PENALTY: \$262;

STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: LCTL, LLC; DOCKET NUMBER: 2014-1311-PST-E; TCEQ ID NUMBER: RN102438462; LOCATION: 117 South Broadway Avenue, Mertzon, Irion County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC §26.3475(d) and 30 TAC §334.49(c)(2)(C) and (4)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and TWC §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests; PENALTY: \$16,071; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Lee Ann Potter and Chad Simons, d/b/a Tire Gauge; DOCKET NUMBER: 2016-0547-MSW-E; TCEQ ID NUMBER: RN109021477; LOCATION: 2204 Farm-to-Market 1431, Kingsland, Llano County; TYPE OF FACILITY: used tire shop and scrap tire transporter facility; RULES VIOLATED: 30 TAC §328.55(4) and §328.56(a)(2), by failing to notify the agency of any change regarding the used tire transporter and generator registrations within 15 days of the occurrence of the change; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$24,833; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: Loyal Lybarger d/b/a Ponderosa Mobile Home Park; DOCKET NUMBER: 2015-1570-MLM-E; TCEQ ID NUMBER: RN101456333; LOCATION: 10423 Olga Lane, Trailer 12, Houston, Harris County; TYPE OF FACILITY: public water system and public water utility; RULES VIOLATED: TWC §13.1395(b)(2), 30 TAC §290.39(o)(1) and §291.162(a) and (j), and TCEQ DO Docket Number 2010-1755-MLM-E, Ordering Provision Number 3.b., by failing to adopt and submit to the executive director (ED) for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; 30 TAC §290.117(c)(2)(C) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory and submit the results to the ED, and by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper samples; 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 collect routine coliform monitoring samples; and 30 TAC §§290.272, 290.273, and 290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report; PENALTY: \$24,179; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512)

239-0655; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Mukhtar Farooqui d/b/a Cypress Chevron; DOCKET NUMBER: 2015-0795-PST-E; TCEQ ID NUMBER: RN101651214; LOCATION: 14110 Teige Road, Cypress, Harris 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); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,250; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201605206

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 11, 2016



Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit Proposed Permit Number 2393

APPLICATION. Cactus Reclamation Services, LLC, 4960 Singleton Boulevard, Dallas, Dallas County, Texas 75212, owner/operator of a proposed Type V Municipal Solid Waste processing facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit authorizing the acceptance of nonhazardous Class 1, 2, and 3 waste, grit and lint trap waste, sludge from municipal and industrial wastewater treatment, septage, and oily water from commercial and industrial oil-water separators. The Cactus Reclamation Services, LLC-Wilmer Processing Facility is located at 102 Miller Ferry Road, Wilmer, Dallas County, Texas 75146. The TCEQ received this application on August 29, 2016. The permit application is available for viewing and copying at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Dallas County, Texas 75201, and may be viewed online at http://www.team-psc.com/s/mi_permits.html. The following website provides an electronic map of the site or facility's general location and is provided as a public courtesy and is not part of the application or notice: <https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.563055&lng=-96.667222&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's

Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Cactus Reclamation Services, LLC at the address stated above or by calling Mr. Michael Wasserman, Cactus Reclamation Services Member at (214) 252-5003.

TRD-201605225

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 12, 2016



Notice of Water Rights Application

Notice issued October 4, 2016

APPLICATION NO. 4050A; Dallas County Utility and Reclamation District, P.O. Box 140035, Irving, Texas 75014, Applicant, seeks to maintain a dam and reservoir (Reservoir 58) on Hackberry Creek, Trinity River Basin for recreation purposes in Dallas County. Applicant will use contract water to initially fill and maintain Reservoir 58. Applicant also seeks to use the bed and banks of Reservoir 58 to convey such water to initially fill and maintain Reservoir 58 and for subsequent diversion and use to maintain the reservoir and for agricultural purposes to irrigate land in Dallas County. Applicant also seeks to correct Paragraph 4(b) in Water Use Permit No. 4050 to replace the words "Dallas County Municipal Utility District No. 1" with "Dallas County Utility and Reclamation District." The Applicant is not requesting a new appropriation of state water in this application. The application and partial fees were received on August 22 and 25, 2014. Additional information and fees were received April 2, May 8, May 9, August 3, and December 21, 2015, and January 11, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 2, 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 Permittee to maintain an alternate source of water. 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 Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case

hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (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.

TRD-201605227

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 12, 2016



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2016, for Candidates

Anthony Alcoser, 234 Ravenhill Dr., San Antonio, Texas 78214

Dane A.N. Eyerly, 704 E. Williamsburg Manor, Arlington, Texas 76014

Devin D. Gabriel, 26306 Walden Oak, San Antonio, Texas 78260

Louie Minor, Jr., 2118 W. U.S. Hwy., 190, Belton, Texas 76513

Kimberly Yvette Willis, 5950 Donwhite Ln., Houston, Texas 77088

Deadline: Semiannual Report due July 15, 2016, for Committees

Celia D. Morgan, Texas Young Democrats PAC, 1408 Carswell Ter., Arlington, Texas 76010

Carla C. Sisk, Hays County Republican Women, 808 El Camino Way, San Marcos, Texas 78666

Gregory W. Smith, Liberty PAC, 6105 Westline Dr., Houston, Texas 77036

Kane Wilt, Dallas Fire Fighters Public Safety Committee, 10956 Audelia Rd., Dallas, Texas 75243

Deadline: Monthly Report due August 5, 2016, for Committees

Keith A. Houser, Citizens For Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

Adam Pacheco, Associated General Contractors of El Paso PAC, 120 Paragon, Ste. 101, El Paso, Texas 79912

Regina A. Tyroch, Whistle Political Action Committee Incorporated d/b/a Whistle PAC, 17424 W. Grand Pkwy., Ste. 160, Sugar Land, Texas 77479

TRD-201605126

◆ ◆ ◆
Office of the Governor

Call for Information: Child Sex Trafficking Hotline

Background

The Child Sex Trafficking Team (CS TT) at the Texas Governor's Office is leading a collaboration of public and private partners to build a



The CS TT works with law enforcement, the child protection and juvenile justice systems, and other stakeholders combatting child sex trafficking to identify gaps, promote best practices and build the capacity of our state to eradicate the exploitation of our children.

Purpose

The purpose of this announcement is to solicit information from organizations that operate hotlines that may currently serve, or have the potential to serve, some or all of the below functions so that CS TT can make informed decisions about promotion and support of a hotline to address child sex trafficking in the State of Texas. The Criminal Justice Division (CJD) in the Office of the Governor may or may not make a final decision as to the organization to host this hotline as a result of this call for information. CJD may also follow this call for information with more questions. While information concerning specific reports and investigations of child sex trafficking is confidential, any other information provided in response to these questions is subject to the Texas Public Information Act.

Functions of the proposed hotline:

- report or facilitate the reporting of child sex trafficking to law enforcement or DFPS (in compliance with Texas' mandatory reporting law);
- collect information and intelligence on sex trafficking cases and related information for use in law enforcement and child protection investigations and prosecutions;
- compile, analyze and report data on sex trafficking to the Governor's Office and other stakeholders; and

comprehensive approach to combat child sex trafficking in Texas. The child-centered approach will:

- protect children by building their awareness of and resilience to child exploitation and by curbing demand for child sex trafficking;
- recognize child sex trafficking by raising public awareness to help identify child sex trafficking in all its forms;
- recover survivors and provide them the immediate and long-term services and supports they need to heal and thrive; and
- bring justice to survivors by holding traffickers, buyers, and those who profit from trafficking accountable.

- accept calls from survivors, their caregivers and other members of the community and provide referral information about services appropriate for access immediately upon recovery and throughout their restoration.

Eligibility

Interested parties must be public or private organizations that operate a hotline that currently receives calls reporting suspected child sex trafficking.

Format

Provide the following information in a Microsoft Word format using the following order: (Please list the category name and question first, before providing answers.)

Child Sex Trafficking Reports

1. How long has this hotline been operating and how many reports of actual or suspected child sex trafficking has it handled in the past three years?
2. How many calls were from Texas in the past three years? What percentage of your total calls the past three years were from Texas?
3. Describe in detail the process the hotline uses for handling these reports.

Services for Child Sex Trafficking Survivors

1. How many calls has the hotline received from callers seeking information about or referrals to services for victims of child sex trafficking in the past three years?

2. How many calls were from Texas in the past three years? What percentage of your total calls the past three years were from Texas?
3. Describe in detail the process for handling these calls.
4. Describe how you gather, vet, and maintain the hotline's directory of service providers.
5. How many service providers are maintained on this directory and if reportable, how many different providers have referrals been made to in the past three years?

Compliance with Child Abuse Reporting Requirements

1. Does a call to your hotline satisfy a caller's duty to report child abuse under Texas law?
2. If yes, how?
3. If no, could the hotline facilitate an individual's compliance with the reporting requirement? Would additional technology or resources be necessary? Please explain.

Cost Information

1. How much does it cost to run the hotline each year? Based on call volume, what is the per call cost? If not operating in Texas, what would the projected cost be to provide hotline services regarding Texas calls and referrals each year?
2. Please list all sources of funding received within the last three years.
3. Would your hotline be able to ramp up to serve an additional 1000 callers in Texas? If so, how much would it cost to handle an additional 1000 calls/year seeking services for child sex trafficking victims and/or reporting child sex trafficking?

Hotline Functionality

1. What is the average wait time for a caller on the hotline? What is the hang-up rate?
2. Is your hotline available 24/7?
3. Are hotline operators taking calls from a facility location or remotely (e.g. from their homes)?
4. How is the performance of hotline operators supervised?
5. What languages can your hotline handle? Does this capacity rely on external or only internal translators?
6. Can reports or requests for help be filed online? By text?
7. What do you do with the information and intelligence you receive in a report regarding child sex trafficking?
8. How do you protect the confidentiality of information reported on the hotline?
9. How do you decide which law enforcement agency/ies to refer potential cases to? What is the process you use to deconflict any of the information received with other hotlines/providers and/or law enforcement in Texas?
10. What database do you use to capture hotline activity? What database do you use for individual report information?
11. What reports are you able to generate from your database? Please attach two de-identified sample reports: A) one currently generated for monitoring of hotline functions and, B) one aggregating information about calls.

Other Information

1. What is the total volume of calls, trafficking-related and all other types, managed by your hotline over the last one and three year periods?

2. What else do we need to know about your hotline and its capabilities to act as the/one of the main hotline/s for child sex trafficking in Texas?
3. What changes/improvements are planned to the hotline or the way you handle child sex trafficking calls in the next year? Next five years?
4. What else should we know in making a decision on which hotline to promote as the state's child sex trafficking hotline?

Process & Deadline

Interested parties must respond to this announcement via email to Andrea Sparks at andrea.sparks@gov.texas.gov by 5 p.m. CST on November 30, 2016.

Decisions

CJD will review all information to determine the universe of capable, qualified hotlines available. CJD may narrow its options for selecting a partner to host the hotline and may ask for clarification or additional information. CJD reserves the right to select a partner and negotiate relevant terms with that partner without any further opportunity announcements.

Contact Information

If additional information is needed, contact Andrea Sparks at andrea.sparks@gov.texas.gov.

About CJD

Our mission at the Criminal Justice Division is to direct much needed resources to those who are committed to making Texas a safer place and those who help victims of crime to recover and feel safe again. In carrying out this mission, we are committed to helping our partners by actively finding ways for them to accomplish their goals and by making sure that we always have our eye to identifying the approaches that work best. We envision positive and beneficial working relationships with our stakeholders where we provide as much assistance as is needed and where we are always ready with support or answers, not burdensome restrictions or requirements.

CJD is providing over \$250 million in funding to hundreds of organizations during state fiscal year 2016 for juvenile justice, delinquency prevention, victims services, law enforcement, prosecution, courts, specialty courts, combatting of child sex trafficking, and other types of projects to benefit Texans.

About CSTT

The Child Sex Trafficking Team (CSTT) at the Texas Governor's Office is leading a collaboration of public and private partners to build a comprehensive approach to combat child sex trafficking in Texas. The child-centered approach will:

- protect children by building their awareness of and resilience to child exploitation and by curbing demand for child sex trafficking;
- recognize child sex trafficking by raising public awareness to help identify child sex trafficking in all its forms;
- recover survivors and provide them the immediate and long-term services and supports they need to heal and thrive; and
- bring justice to survivors by holding traffickers, buyers, and those who profit from trafficking accountable.

CSTT works with law enforcement, the child protection and juvenile justice systems, and other stakeholders combatting child sex trafficking to identify gaps, promote best practices and build the capacity of our state to eradicate the exploitation of our children.

TRD-201605173

Andrea Sparks
Director, Child Sex Trafficking Team
Office of the Governor
Filed: October 10, 2016

◆ ◆ ◆
Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Indian Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Indian Health Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rate for Indian Health Services is proposed to be effective January 1, 2016.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC §355.8620, which addresses the reimbursement methodology for Services Provided in Indian Health Service and Tribal Facilities.

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605199
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 10, 2016

◆ ◆ ◆
Notice of Public Hearing on Proposed Medicaid Payment Rates for the 1st and 2nd Quarter 2016 Healthcare Common Procedures Coding System Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 1st and 2nd Quarter 2016 Healthcare Common Procedures Coding System (HCPCS) Updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the 1st and 2nd Quarter 2016 HCPCS Updates are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605197
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 10, 2016

◆ ◆ ◆
Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located

at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective January 1, 2017, for the following services:

Combination Type of Service 1-2-I-T (Medical Services, Surgery, and Interpretation and Technical Components)

Long Acting Reversible Contraceptives (LARCs) (Devices only)

Medical Nutrition Therapy

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

§355.8581, which addresses the reimbursement methodology for Family Planning Services; and

§355.8641, which addresses the reimbursement methodology for the Women's Health Program.

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605196

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Dental Rehabilitation

and Restoration in an Ambulatory Surgical Center/Hospital Ambulatory Surgical Center

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Dental Rehabilitation and Restoration in an Ambulatory Surgical Center (ASC)/Hospital Ambulatory Surgical Center (HASC).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Dental Rehabilitation and Restoration in an ASC/HASC are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers.

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605202

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Human Donor Milk

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Human Donor Milk.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located

at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Human Donor Milk are proposed to be effective March 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8052, which addresses inpatient hospital reimbursement.

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605198

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Microsurgery

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Microsurgery.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Microsurgery are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605193

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Outpatient Behavioral Health

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Outpatient Behavioral Health.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Outpatient Behavioral Health are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8091, which addresses the reimbursement methodology for Licensed Professional Counselors, Licensed Master Social Worker-Advanced Clinical Practitioners, and Licensed Marriage and Family Therapists; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605194

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Respiratory Equipment and Supplies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Respiratory Equipment and Supplies.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Respiratory Equipment and Supplies are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contact-

ing Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605200

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Special Review of Ambulatory Surgical Centers/Hospital Ambulatory Surgical Centers

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 16, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Special Review of Ambulatory Surgical Centers (ASCs)/Hospital Ambulatory Surgical Centers (HASCs).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Special Review of ASCs/HASCs are proposed to be effective January 1, 2017.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers and Hospital Ambulatory Surgical Centers.

Briefing Package. A briefing package describing the proposed payments will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after November 3, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475;

or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201605201

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 10, 2016



Department of State Health Services

Amendment to the Texas Controlled Substances Schedule

This amendment to the Texas Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

The Drug Enforcement Administration (DEA) is placing the substance thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperadine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers as possible, into schedule II of the Controlled Substances Act effective August 23, 2016. The interim final rule was published in the Federal Register, Volume 81, Number 166, pages 58834-58840. The DEA has taken action based on the following.

1. Thiafentanil has a high potential for abuse;
2. Thiafentanil has a currently accepted medical use with severe restrictions; and,
3. Thifentanil may lead to severe psychological or physical dependence.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance thiafentanil be placed into schedule II.

SCHEDULE II

Schedule II consists of:

- Schedule II substances, vegetable origin or chemical synthesis

- Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers as possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;

- (5) Carfentanil;
- (6) Dextropropoxyphene, bulk (nondosage form);
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol (some trade or other names: levo-alphaacetylmethadol, levomethadyl acetate, LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone Intermediate, 4 cyano 2 dimethylamino 4,4 diphenyl butane;
- (17) Moramide Intermediate, 2 methyl 3 morpholino 1,1 diphenyl propane carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine Intermediate A, 4 cyano 1 methyl 4 phenylpiperidine;
- (20) Pethidine Intermediate B, ethyl 4 phenylpiperidine 4 carboxylate;
- (21) Pethidine Intermediate C, 1 methyl 4 phenylpiperidine 4 carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil;
- (28) Tapentadol; and
- * (29) Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperadine).

- Schedule II stimulants

- Schedule II depressants

- Schedule II hallucinogenic substances

- Schedule II precursors

Changes to the schedules are designated by an asterisk (*).

TRD-201605224

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: October 12, 2016



Amendment to the Texas Schedule of Controlled Substances

This amendment to the Texas Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

The Drug Enforcement Administration (DEA) is placing the substances quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC), quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22), N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA) and N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule I of the Controlled Substances Act effective September 6, 2016. The final rule was published in the Federal Register, Volume 81, Number 172, pages 61130-61133. The DEA has taken action based on the following.

(1) PB-22, 5-fluoro-PB-22; AB-FUBINACA; and ADB-PINACA have a high potential for abuse that is comparable to other schedule I substances such as delta-9-tetrahydrocannabinol and JWH-018;

(2) PB-22, 5-fluoro-PB-22, AB-FUBINACA and ADB-PINACA have no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of PB-22, 5-fluoro-PB-22, AB-FUBINACA and ADB-PINACA under medical supervision.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substances PB-22, 5-fluoro-PB-22; AB-FUBINACA; and ADB-PINACA will no longer be temporarily scheduled substances, but will be placed permanently into Schedule I.

Additionally, UR-144, XLR11 and APINACA will be placed under the heading Schedule I hallucinogenic substances. This is a move for documentation purposes only. This will have no effect on the scheduling action published in the September 9, 2016 *Texas Register*.

SCHEDULE I

Schedule I consists of:

- Schedule I opiates

- Schedule I opium derivatives

- Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4 bromo 2,5 dimethoxyamphetamine (some trade or other names: 4 bromo-2,5 dimethoxy alpha methylphenethylamine; 4 bromo 2,5 DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5 dimethoxyamphetamine (some trade or other names: 2,5 dimethoxy alpha methylphenethylamine; 2,5 DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5 methoxy 3,4 methylenedioxy-amphetamine;

(10) 4 methoxyamphetamine (some trade or other names: 4 methoxy alpha methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1 methyl 4 phenyl 1,2,5,6 tetrahydro pyridine (MPTP);

(12) 4 methyl 2,5 dimethoxyamphetamine (some trade and other names: 4 methyl 2,5 dimethoxy alpha methyl phenethylamine; "DOM"; and "STP");

(13) 3,4 methylenedioxy-amphetamine;

(14) 3,4 methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4 methylenedioxy-N ethylamphetamine (some trade or other names: N ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5 trimethoxy amphetamine;

(17) N hydroxy 3,4 methylenedioxyamphetamine (Also known as N hydroxy MDA);

(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl) 5 hydroxyindole; 3 (2 dimethylaminoethyl) 5 indolol; N,N dimethylserotonin; 5 hydroxy N,N dimethyltryptamine; map-pine);

(20) Diethyltryptamine (some trade and other names: N,N Diethyltryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N ethyl 1 phenylcyclohexylamine; (1 phenylcyclohexyl) ethylamine; N (1 phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7 Ethyl 6,6-beta, 7,8,9,10,12,13 octhydro 2 methoxy 6,9 methano-5H-pyrido[1',2':1,2] azepino [5,4 b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(28) N ethyl 3 piperidyl benzilate;

(29) N methyl 3 piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3 Hexyl 1 hydroxy 7,8,9,10 tetrahydro 6,6,9 trimethyl 6H dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1 phenyl- cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(36) Thiophene analog of phencyclidine (some trade or other names: 1 [1 (2 thienyl)cyclohexyl] piperidine; 2 thienyl analog of phencyclidine; TCP);

(37) 1 [1 (2 thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

(38) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

(39) 3,4-methylenedioxypropylvalerone (MDPV);

(40) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other names: 2C-E);

(41) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

(42) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

(43) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

(44) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

(45) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

(46) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names: 2C-H);

(47) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N);

(48) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P); and,

(49) 3,4-Methylenedioxy-N-methylcathinone (Other name: Methy-lone).

(50) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);

(51) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole); and,

(52) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA, AKB48).

*(53) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

*(54) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

*(55) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: AB-FUBINACA); and

*(56) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA)

- Schedule I stimulants

- Schedule I depressants

- Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(1-2) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(1-3) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(1-4) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(1-5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);

- (3) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);
- (4) 1-pentyl-3-(1-naphthoyl)indole (Other names: JWH-018 and AM678);
- (5) 1-mutyl-3-(1-naphthoyl)indole (Other names: JWH-073);
- (6) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);
- (7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);
- (8) 1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);
- (9) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);
- (10) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);
- (11) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);
- (12) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);
- (13) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);
- (14) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);
- (15) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS- 8);
- (16) 1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203);

- Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, esters, ethers and salts of isomers, esters and ethers if the existence of the salts, isomers, esters, ethers and salts of isomers is possible within the specific chemical designation.

- (1) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);
- (2) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);
- (3) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);
- (4) 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one);
- (5) 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one);
- (6) alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one);

- (7) Butylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one);
- (8) Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one);
- (9) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one);
- (10) 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);
- (11) 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one);
- (12) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one);
- (13) alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one);
- (14) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: "AB-CHMINACA");
- (15) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA");
- (16) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other names: "THJ-2201");
- (17) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (Other names: acetyl fentanyl);
- (18) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ABD-CHMINACA)
- (19) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (Other name: butyryl fentanyl); and
- (20) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropanamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide (Other name: beta-hydroxythiofentanyl).

Changes to the schedules are designated by an asterisk (*).

TRD-201605228

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: October 12, 2016



Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by TEXAS HEALTH + AETNA HEALTH INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Arlington, Texas.

Application for incorporation in the State of Texas by TEXAS HEALTH + AETNA HEALTH PLAN INC., a domestic Health Maintenance Organization. The home office is in Arlington, 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-201605221
 Norma Garcia
 General Counsel
 Texas Department of Insurance
 Filed: October 12, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1819 "Hipster Holiday"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1819 is "HIPSTER HOLIDAY". The play style is "match 3 of X".

1.1 Price of Scratch Ticket Game.

Figure 1: GAME NO. 1819 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
MUSTACHE SYMBOL	MSTCH

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, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100 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 (1819), 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: 1819-0000001-001.

A. The price for Scratch Ticket Game No. 1819 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1819.

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: \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and MUSTACHE 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:

J. Pack - A Pack of the "HIPSTER HOLIDAY" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 150 while the other fold will show the back of Ticket 001 and front of 150.

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 "HIPSTER HOLIDAY" Scratch Ticket Game No. 1819.

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 "HIPSTER HOLIDAY" Scratch Ticket

Game is determined once the latex on the Scratch Ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 (three) matching prize amounts Prize Symbols, the player wins that amount. If a player reveals 2 (two) matching prize amounts Prize Symbols and a "MUSTACHE" Play Symbol, the player wins DOUBLE that amount. 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 9 (nine) 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 9 (nine) Play Symbols on the 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 in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No four (4) or more matching Play/Prize Symbols on a Ticket.

D. No three (3) or more pairs of matching Play/Prize Symbols on a Ticket.

E. No more than two (2) matching Play/Prize Symbols on a Ticket containing the "MUSTACHE" (MSTCH) Play Symbol.

F. The "MUSTACHE" (MSTCH) Play/Prize Symbol will never appear more than once on a Ticket.

G. The "MUSTACHE" (MSTCH) Play/Prize Symbol may appear on both winning and Non-Winning Tickets.

H. The "MUSTACHE" (MSTCH) Play/Prize Symbol will appear on winning Tickets as dictated by the prize structure.

I. When the "MUSTACHE" (MSTCH) Play Symbol appears on Non-Winning Tickets, all other Play/Prize Symbols will be unique.

2.3 Procedure for Claiming Prizes.

A. To claim a "HIPSTER HOLIDAY" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 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 \$40.00, \$50.00, \$100 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 "HIPSTER HOLIDAY" 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 "HIPSTER

HOLIDAY" 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 "HIPSTER HOLIDAY" 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 Ticket Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 1819. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1819 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	840,000	10.71
\$2	585,000	15.38
\$4	240,000	37.50
\$5	150,000	60.00
\$10	60,000	150.00
\$20	30,000	300.00
\$40	4,125	2,181.82
\$50	2,550	3,529.41
\$100	1,500	6,000.00
\$500	75	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.70. 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. 1819 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. 1819, 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-201605219

Bob Biard

General Counsel

Texas Lottery Commission

Filed: October 12, 2016



Scratch Ticket Game Number 1820 "Wild Cash Bonanza"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1820 is "WILD CASH BONANZA". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1820 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1820.

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: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$\$ SYMBOL, WILD SYMBOL, CASH SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$250, \$500, \$2,500 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1820 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TNTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
\$\$ SYMBOL	DOUBLE
WILD SYMBOL	WINX5
CASH SYMBOL	WINALL
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$2,500	25HN
\$100,000	100TH

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 \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$250 or \$500.

H. High-Tier Prize - A prize of \$2,500 or \$100,000.

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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1820), 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: 1820-0000001-001.

K. Pack - A Pack of the "WILD CASH BONANZA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning 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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "WILD CASH BONANZA" Scratch Ticket Game No. 1820.

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 "WILD CASH BONANZA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "\$\$" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "WILD" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "CASH" Play Symbol, the player wins ALL 20 PRIZES instantly! 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 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 45 (forty-five) 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 in a Pack will not have matching play data, spot for spot.
- B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

- C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.
- D. No matching WINNING NUMBERS Play Symbols on a Ticket.
- E. The "\$\$" (DOUBLE) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.
- F. The "WILD" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.
- G. The "CASH" (WINALL) Play Symbol will only appear once on intended winning Tickets as dictated by the prize structure.
- H. When the "CASH" (WINALL) Play Symbol appears, there will be no occurrence of a YOUR NUMBERS Play Symbol matching a WINNING NUMBERS Play Symbol and, if applicable, no occurrence of any other special features (i.e., auto wins or multipliers) on a Ticket.
- I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).
- J. A Ticket may have up to three (3) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.
- K. A non-winning Prize Symbol will never match a winning Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD CASH BONANZA" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$250 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 \$25.00, \$50.00, \$100, \$250 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. To claim a "WILD CASH BONANZA" Scratch Ticket Game prize of \$2,500 or \$100,000, 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 "WILD CASH BONANZA" 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 "WILD CASH BONANZA" 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 "WILD CASH BONANZA" 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 Ticket Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 1820. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1820 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	911,200	8.82
\$10	562,800	14.29
\$20	187,600	42.86
\$25	107,200	75.00
\$50	99,562	80.75
\$100	20,100	400.00
\$250	3,685	2,181.82
\$500	2,010	4,000.00
\$2,500	402	20,000.00
\$100,000	8	1,005,000.00

*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 4.24. 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. 1820 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. 1820, 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-201605220
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 12, 2016

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North Central Texas Council of Governments

Request for Partners for Traffic Signal Data Sharing for Automated Vehicle Application Development

The North Central Texas Council of Governments (NCTCOG) is seeking partners for Traffic Signal Data Sharing for Automated Vehicle Application Development. The purpose of this Request for Partners (RFP) is to identify parties who might be interested in building transportation-related applications based on traffic signal data. Original Equip-

ment Manufacturers (OEMs) are working on applications based on traffic signal data. There are app developers who use traffic signal data. Travel navigation services and automated vehicle developers are considering whether and how to use traffic signal data in their applications. The RFP is intended to stimulate interest by these parties in using traffic signal data from this region to build their applications. Whether and how our regional partners share their traffic signal data to support transportation-related apps that work in their communities is up to them.

Statements of Interest must be received no later than 5:00 p.m., on Friday, December 16, 2016, to Thomas Bamonte, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Partners will be available at www.nctcog.org/rfp by the close of business on Friday, October 21, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201605216
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: October 11, 2016

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 5, 2016, to amend a state-issued certificate of fran-

chise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46426.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Sadler, 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46426.

TRD-201605138
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2016



Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on October 4, 2016, for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide facilities-based, data and resale telecommunications services throughout the entire state of Texas.

Docket Title and Number: Application of MetroIP Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 46425.

Persons who wish to comment upon 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 no later than October 28, 2016. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46425.

TRD-201605127
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 6, 2016



Notice of Application for Designation as a Wireline Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on October 5, 2016 for designation as a wireline eligible telecommunications carrier (ETC) in the State of Texas pursuant to 16 Tex. Admin. Code §26.418.

Docket Title and Number: Application of Global Connection Inc. of America for Designation as a Wireline Eligible Telecommunications Carrier in the State of Texas, Docket Number 46428.

The Application: Global Connection Inc. of America is a facilities-based telecommunications carrier that seeks designation as an ETC for the purpose of offering Lifeline service to eligible customers through-

out the non-rural parts of the AT&T Texas, CenturyLink, Frontier and Windstream service territories. A list of the wire centers included in the proposed service area is attached as Exhibit B to the application.

Persons who wish to comment on this application should notify the commission by November 10, 2016. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46428.

TRD-201605139
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2016



Notice of Application to Amend Water Certificate 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 a water certificate of convenience and necessity (CCN) in Montgomery County, Texas.

Docket Style and Number: Application of the MSEC Enterprises, Inc. to Amend a Water Certificate of Convenience and Necessity in Montgomery County, Docket Number 46423.

The Application: The MSEC Enterprises, Inc. filed an application to amend its water CCN Number 12887 in Montgomery County. The total area being requested includes approximately 216 acres and no 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46423.

TRD-201605212
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2016



Public Notice of Strawman and Workshop

The Staff of the Public Utility Commission of Texas (commission) will file a strawman rule regarding governance, performance, and funding of Smart Meter Texas on October 21, 2016 under Project No. 46206 in Central Records and on the Project No. 46206 webpage. Staff invites comments on the strawman rule. Initial comments may be submitted by Thursday, November 4, 2016, and reply comments may be submitted by Friday, November 18, 2016 to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of the comments and reply comments must be filed. Comments should reference Project No. 46206 and be organized in a manner consistent with the organization of the strawman rule. These comments will be useful in developing a pro-

posed rule (Proposal for Publication) that is expected to be published for comment.

Commission Staff will conduct a workshop regarding this project on Monday, November 14, 2016, at 9:30 a.m. in the Commissioners Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. An agenda for the workshop will be made available in Central Records under Project No. 46206 on Friday, November 4, 2016.

Questions concerning the strawman rule, workshop, or this notice should be referred to Therese Harris, Senior Utility Analyst, Infrastructure and Reliability Division, (512) 936-7378. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201605214
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2016

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Teacher Retirement System of Texas

Rule Review Plan, Chapter 53 - 403(b) Program Rules

In accordance with the Texas Government Code §2001.039, regarding Agency Review of Existing Rules and requiring the Teacher Retirement System of Texas (TRS) and other governmental bodies to review their rules every four years, TRS submits the following Rule Review Plan.

The Policy Committee (committee) of the TRS Board of Trustees (board) has authorized for public comment this Rule Review Plan for the following board rules according to the general schedule set out below:

September 2016 - June 2017:

Title 34, Part 3, Texas Administrative Code:

Chapter 53, Certification by Companies Offering Qualified Investment Products

During the review of board rules relating to TRS' 403(b) company certification and product registration program (403(b) program), the committee and board will consider the readoption, amendment, or repeal of rules in Chapter 53. The committee has also authorized public comment publication of a Notice of Intention to Review (Proposed Rule Review Notice) for Chapter 53, which will appear in an upcoming issue of the *Texas Register*. In response to the Rule Review Plan and Proposed Rule Review Notice, the public will have opportunities to provide comments on the rules in Chapter 53 in writing and by addressing the committee or board at the April 2017 meeting. The Proposed Rule Review Notice to be published in the *Texas Register* will provide further details regarding public comment on the rules under review.

At the April 2017 meeting, the committee or the board or both will consider authorizing for public-comment publication any proposed changes to the 403(b) program rules resulting from the review of Chapter 53.

At the June 2017 meeting, the committee and the board will consider the proposed adoption of the completed rule review and any changes to Chapter 53 as a result of the rule review. The public will have an opportunity then to comment on the proposed completion of the Chapter 53 rule review and any changes to the rules resulting from the review.

Set out below is the detailed Rule Review Plan for Chapter 53, which is subject to change:

September 22, 2016: The TRS review of Chapter 53 begins. The committee considers filing the proposed Rule Review Plan with the Secretary of State and authorizing public comment publication of the Proposed Rule Review Notice in the *Texas Register*. The public is given the opportunity to comment on the scope and schedule of the proposed rule review.

April 6 - 7, 2017: The committee considers authorizing public-comment publication of any rule changes needed in Chapter 53 as a result of the rule review. The public is given the opportunity to comment on the rule review and any proposed changes to rules in Chapter 53.

June 1 - 2, 2017: The committee and the board consider the adoption of the completed rule review of Chapter 53. In connection with completing the rule review, the committee and board consider adopting any changes to rules in Chapter 53 and readopting the remaining ones without changes. The public is given the opportunity to comment on the proposed completion of the rule review, the adoption of any rule changes, and the readoption of 403(b) rules without changes.

Comments regarding the contents of this Rule Review Plan may be submitted in writing to Brian K. Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701.

The following chapter is available for review at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=34&pt=3&ch=53&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=3&ch=53&rl=Y): Chapter 53. Certification by Companies Offering Qualified Investment Products.

TRD-201605191
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: October 10, 2016

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Quanah, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional architectural/engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Quanah; TxDOT CSJ No.: 1725QUANH.

Scope: Provide engineering/design services, including construction administration, to:

1. Rehabilitate and mark Runway 17-35;
2. Rehabilitate and mark Parallel Taxiways and Stub Taxiways;
3. Rehabilitate and mark apron;
4. Rehabilitate and mark Taxiway A;
5. Repair and service precision approach path indicator system;
6. Perform pavement strength evaluation.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement,

that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises. **The DBE goal for the design phase of the current project is 8%. The goal will be re-set for the construction phase.** TxDOT Project Manager is Robert Johnson.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Quanah Municipal Airport may include the following: expand apron; widen Taxiway pavement; extend Taxiway south to Runway 35; and service and repair airfield electrical systems (medium intensity runway lights, precision approach path indicator, Beacon, etc.).

The City of Quanah reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Quanah Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 **must be received** in the TxDOT Aviation eGrants system no later than November 15, 11:59 P.M. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us webform located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at 1-800-687-4568 or avn-egrantshelp@txdot.gov.

TRD-201605133

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 7, 2016



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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