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

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Appointments

Appointments for December 11, 2017

Appointed as the public counsel for the Office of Public Insurance Counsel for a term to expire February 1, 2019, Melissa R. Hamilton of Austin (replacing Deea Beck of Austin whose term expired).

Appointments for December 15, 2017

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Shemica S. Allen of McKinney (replacing Susan A. "Stormi" Johnson of Palestine whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Teresa A. Bronsky of Plano (replacing Elvia L. Espino of Irving whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Jo Ann Gama of Edinburg (replacing Gwyn Ann Boyer of Austin whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Stephanie Y. Martinez of Laredo (replacing Vickie J. Mitchell of Montgomery whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Jana C. McKelvey of Austin (replacing Nagla Moussa of Plano whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Kristen K. Tassin of Missouri City (replacing Jennifer H. "Jen" Wylie of Tuscola whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2019, Erin S. Wilder of Round Rock (Ms. Wilder is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Karen W. Beasley of Brownson (replacing Nancy Kay Shugart of Austin whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Jana S. Burns of Saginaw (Ms. Burns is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Elizabeth A. "Beth" Donaldson of Stowell (replacing Deborah K. "Debbie" Unruh of Austin whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Rachel A. Dreiling of Dallas (replacing Jennifer Lynn Taylor of San Antonio whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Julia W. Erwin of Austin (Ms. Erwin is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Robin H. Lock, Ph.D. of Lubbock (Dr. Lock is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Kristine H. Mohajer Motlagh of Leander (replacing Debra Bogan Emerson of Pflugerville whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Laurie Goforth Rodriguez of Houston (Ms. Rodriguez is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Agata K. "Agatha" Thibodeaux of Katy (replacing Myeshi V. Williams-Brisley of Spring whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2021, Jo Ann G. Wofford of New Braunfels (replacing Paul J. Watson of Flower Mound whose term expired).

Appointments for January 3, 2018

Pursuant to HB 553, 85th Legislature, Regular Session, appointed to the Task Force on Academic Credit and Industry Recognition for a term to expire December 1, 2021, Michael S. Bell of Henderson. Mr. Bell will serve as presiding officer of the task force.

Pursuant to HB 553, 85th Legislature, Regular Session, appointed to the Task Force on Academic Credit and Industry Recognition for a term to expire December 1, 2021, Michael T. "Tac" Buchanan of Amarillo.


Pursuant to HB 553, 85th Legislature, Regular Session, appointed to the Task Force on Academic Credit and Industry Recognition for a term to expire December 1, 2021, Vanessa L. Steinkamp of Collegeville.

Pursuant to HB 553, 85th Legislature, Regular Session, appointed to the Task Force on Academic Credit and Industry Recognition for a term to expire December 1, 2021, Jim M. Yeonopulos of Harker Heights.

Appointments for January 4, 2018

Appointed to the Texas Facilities Commission for a term to expire January 31, 2023, Rigoberto "Rigo" Villarreal of Mission (replacing Betty Pinckard Reinbeck of Sealy whose term expired).

Appointments for January 5, 2018

Designating Benjamin E. "Ben" Gatzke of Fort Worth as presiding officer of the Department of Information Resources for a term to expire at the pleasure of the Governor. Mr. Gatzke is replacing Linda I. Shaunessy of Austin as presiding officer.
Appointed to the Department of Information Resources for a term to expire February 1, 2019, James P. "Jay" Dyer of Austin (replacing Linda I. Shaunessy of Austin who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2021, Christian A. Alvarado of Austin (replacing Rigoberto "Rigo" Villarreal of Mission who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2023, Michael D. "Mike" Bell of Spring (replacing Sonya E. Medina Williams of San Antonio who resigned).

Appointments for January 8, 2018

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2019, Ellen M. Bauman of Joshua (replacing Marilou B. Fowler of Houston who resigned).

Greg Abbott, Governor
TRD-201800071

Proclamation 41-3569

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, October 20, 2017, and November 19, 2017, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of December, 2017.

Greg Abbott, Governor
TRD-201800072
Requests for Opinions

RQ-0205-KP

Requestor:
The Honorable James White
Chair, Committee on Corrections
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910
Re: Consequences of failing to comply with the requirements for continuation of existing private transfer fee obligations under section 5.203 of the Property Code (RQ-0205-KP)

Briefs requested by February 8, 2018

RQ-0206-KP

Requestor:
Ms. Whitney Brewster, Executive Director

Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731
Re: Whether a motor vehicle manufacturer or distributor that performs warranty services under a manufacturer's warranty is in violation of section 2301.476(c)(3) of the Occupations Code (RQ-0206-KP)

Briefs requested by February 9, 2018

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

TRD-201800066
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: January 10, 2018

********
PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

DIVISION 7. DSRIP PROGRAM

DEMONSTRATION YEARS 7-8

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1691, concerning Definitions; §354.1693, concerning Regional Healthcare Partnerships (RHPs); §354.1695, concerning Participants; §354.1697, concerning RHP Plan Update; §354.1701, concerning RHP Plan Update Modifications; §354.1707, concerning Performer Valuations; §354.1711, concerning Category B Requirements for Performers; §354.1713, concerning Category C Requirements for Performers; §354.1715, concerning Category D Requirements for Performers; §354.1719, concerning Disbursement of Funds; and §354.1721, concerning Remaining Funds for Demonstration Years (DYs) 7-8.

BACKGROUND AND PURPOSE

Texas operates a Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" in accordance with §1115 of the Social Security Act. This waiver authorized the establishment of the Delivery System Reform Incentive Payment (DSRIP) program. The DSRIP program provides incentive payments to hospitals and certain other providers to support their efforts to enhance access to health care, the quality of care, and the health of patients and families served.

The Program Funding and Mechanics (PFM) protocol governs DSRIP. The current DSRIP DY7-8 rules mirror the proposed PFM protocol language for DY7-8 submitted to CMS on April 11, 2017. Before submitting the proposal to CMS, HHSC posted the draft PFM protocol, along with a survey to solicit stakeholder feedback, to the Transformation Waiver website. HHSC received more than 170 responses to the survey and made a number of revisions to the proposed PFM protocol based on these survey responses.

Following additional stakeholder feedback, HHSC further revised the proposed PFM protocol language for DY7-8 and submitted it to CMS on August 4, 2017. HHSC is amending the rules at this time to make them consistent with the most recent version of the PFM protocol as of December 22, 2017.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §354.1691 clarifies the definitions for the terms "Core activity," "Measure Bundle," "performer," "Statewide hospital factor (SHF)," "Statewide hospital ratio (SHR)," and "System." It also adds definitions of the terms "Denominator," "Measure," and "Volume."

The proposed amendment of §354.1693 clarifies that a performer with physical locations in more than one RHP may be assigned to a single "home" RHP of its choosing. It also clarifies that HHSC, along with CMS, may approve on a case-by-case basis exceptions to the requirement that a provider participate in an RHP as described in §354.1717 of this division (relating to Uncompensated Care (UC) Hospital Requirements) to be eligible to receive a UC pool payment.

The proposed amendment of §354.1695 clarifies that an IGT entity that is also a performer selects Category C Measure Bundles or measures in accordance with §354.1713 (relating to Category C Requirements for Performers), and that an IGT entity not acting as a performer cooperates with a performer to select Category C Measure Bundles or measures in accordance with §354.1713.

The proposed amendment of §354.1697 adds further detail regarding the requirements for performers in defining their systems in the RHP plan update. It also clarifies that each performer's total Patient Population by Provider (PPP) and Medicaid and Low-income or Uninsured (MLIU) PPP baseline data must be provided in the RHP plan update, and that performers must select Category C Measure Bundles and measures in accordance with both the PFM and the Measure Bundle Protocol. It clarifies that performers will need to provide in the RHP plan update for their RHP a description of the transition of their DY2-6 projects to DY7-8, and an explanation of the rationale for their Category C Measure Bundle and measure selections. In addition, the amendment references rather than restates the requirements in §354.1721.

The proposed amendment of §354.1701 allows a performer that is a hospital or physician practice that has received approval from HHSC to select measures, rather than Measure Bundles, from the Measure Bundle Protocol as described in §354.1713 of this division (relating to Category C Requirements for Performers), to submit to HHSC a request to modify its Category C measures as described in the PFM.

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The proposed amendment of §354.1707 clarifies that if a performer participated in DSRIP during the initial demonstration period but not during DY6 and has a total valuation per DY for DY7-8 less than $250,000, the performer may request in the RHP plan update to increase its total valuation to up to $250,000 per DY for DY7-8. It also clarifies that if a performer begins participating in DSRIP in DY7 in accordance with §354.1721 of this division (relating to Remaining Funds for Demonstration Years (DYS) 7-8), its RHP determines its valuation in accordance with §354.1721. Finally, how percentages of a performer's total valuation may be allocated to both Category C and Category D if the performer's RHP meets its minimum private hospital valuation is moved from §354.1715, which relates only to Category D requirements for performers.

The proposed amendment of §354.1711 makes minor clarifying changes and allows a performer that demonstrates good cause to request in the RHP plan update that: 1) its total PPP baseline equal its total PPP for DY5 only and its MLIU PPP baseline equal its MLIU PPP for DY5 only; or 2) its total PPP baseline equal its total PPP for DY6 only and its MLIU PPP baseline equal its MLIU PPP for DY6 only.

The proposed amendment of §354.1713 clarifies and changes certain Category C requirements for hospitals and physician practices and provides more-detailed requirements for hospitals and physician practices with a limited scope of practice. Under the current rules, hospitals and physician practices with a valuation greater than $2 million per DY that do not have a limited scope of practice must: 1) select at least one Measure Bundle with at least one standalone (three-point) measure; or 2) select at least one Measure Bundle with at least one optional three-point measure and select at least one optional three-point measure in that Measure Bundle. Under the proposed amendment, such hospitals and physician practices do not have to meet these requirements until their valuation is greater than $2.5 million per DY. The proposed amendment also allows a hospital with a valuation less than or equal to $2.5 million per DY for DY7-8 to select a rural Measure Bundle, clarifies the formula for determining the minimum point threshold (MPT) for: 1) hospitals that do not have the data needed for the SHF calculation; and 2) hospitals that did not participate in DSRIP during the initial demonstration period or DY6, and clarifies the minimum measure denominator criteria. Finally, it limits the percentage of a hospital's or physician practice's Category C valuation that may be allocated to each selected Measure Bundle with a three-point measure.

The proposed amendment of §354.1713 makes subsection (b) applicable only to community mental health centers (CMHCs) and adds measure selection requirements for CMHCs. Under the proposed amendment, CMHCs must select at least two measures, and CMHCs with a valuation greater than $2.5 million per DY for DY7-8 must select at least one three-point measure. Provisions related to Local Health Departments (LHDs) are moved to new subsection (c) and the measure selection requirements for LHDs are changed to: 1) allow for continuation of certain measures used in the initial demonstration period and DY6; 2) require the selection of at least two measures; and 3) require the selection of at least one three-point measure for LHDs with a valuation greater than $2.5 million per DY. The amendment also limits the percentage of a CMHC's or LHD's Category C valuation that may be allocated to each selected three-point or four-point measure.

The proposed amendment of §354.1713 relating to measurement periods and measure eligible denominator population subsections clarifies that performers must demonstrate good cause to request exceptions to measurement period requirements or eligible denominator population requirements. The amendment also modifies the measurement period requirements, milestones, and carry-forward policy for measures with a delayed baseline measurement period, and clarifies the policy for measures with multiple parts.

The proposed amendment of §354.1713 relating to methodology for P4P measure goal setting specifies that some P4P measures will have a maintenance threshold based on benchmarks and outlines the policy for such measures. The amendment changes how goals are set for QISMC measures with a baseline above the High Performance Level (HPL) and how goals are set for IOS measures. It also adds a provision applicable to certain P4P measures for the baseline measurement period relating to the use of numerators of zero.

The proposed amendment of §354.1715 reflects the move to §354.1707 of language relating to how percentages of a performer's total valuation may be allocated if the performer's RHP meets its minimum private hospital valuation. It also clarifies the deadline by which a performer reports on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type for a DY.

The proposed amendment of §354.1719 clarifies the deadline by which a performer reports on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type for a DY.

The proposed amendment of §354.1721 makes minor clarifying changes.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal implications to state government as a result of enforcing and administering the amendments as proposed.

There are no fiscal implications to local governments as a result of enforcing and administering the amendments as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years the amendments will be in effect:

(1) the proposed amendments will not create or eliminate a government program;
(2) implementation of the proposed amendments will not require the creation or elimination of employee positions;
(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
(5) the proposed amendments will not create a new rule;
(6) the proposed amendments will not expand, limit, or repeal an existing rule; and
(7) the proposed amendments will not change the number of individuals subject to the rule.
HHSC has insufficient information to determine the proposed amendments' effects on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Participation in the DSRIP program and in DSRIP DY7-8 is voluntary.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT

Enrique Marquez, Deputy Executive Commissioner, HHSC Medical and Social Services Division, has determined that for each year of the first five years the amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit as a result of enforcing or administering the amendments will be improved quality of care for individuals served by DSRIP performers.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kimberly Tucker, Healthcare Transformation Waiver Unit, at (512) 424-6605.

Written comments on the proposal may be submitted to Kimberly Tucker, Health and Human Services Commission, Healthcare Transformation Waiver Unit, Brown-Healy Building, 4900 N. Lamar Blvd., Mail Code H-425, Austin, Texas 78751; by fax to (512) 424-6974; or by e-mail to TXHealthcareTransformation@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 18R014" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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

§354.1691. Definitions. The following words and terms, when used in this division, have the following meanings unless the context clearly indicates otherwise.

(1) Core activity--An activity implemented by a performer to improve patient health or quality of care. It may be [achieve the performer's Category C measure goals as described in the Measure Bundle Protocol. A core activity may be an activity implemented by a performer as] part of a DSRIP project implemented by a performer during the initial demonstration period [or DY6] that the performer continues in DY7-8, or a new activity implemented by a performer in DY7-8. It may be implemented by a performer to achieve the performer's Category C measure goals or it may be connected to the mission of the performer's organization.

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

(6) Denominator--As it relates to a Category C measure's volume:

(A) the number of Medicaid and low-income or uninsured (MLIU) cases; or

(B) one of the following, which the performer receives approval from HHSC to use for the measure:

(i) the number of all-payer cases;

(ii) the number of Medicaid cases; or

(iii) the number of low-income or uninsured (LIU) cases.

(7) DSRIP pool--Funds available to DSRIP performers under the waiver for their efforts to enhance access to health care, the quality of care, and the health of patients and families they serve.

(8) Encounter--An encounter, for the purposes of Medicaid and Low-income Uninsured (MLIU) Patient Population by Provider (PPP) and total PPP, is any physical or virtual contact between a performer and a patient during which an assessment or clinical activity is performed, with exceptions including those in subparagraph (B) of this definition.

(A) An encounter must be documented by the performer.

(B) A phone call or text message is not considered an encounter.

(9) 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.

(10) Initial demonstration period--The first five demonstration years (DYs) of the waiver, or December 12, 2011, through September 30, 2016.

(11) Insignificant volume--For most Category C measures, the denominator is considered to have insignificant volume if its volume is greater than zero but less than 30.
(12) Measure--A mechanism to assign a quantity to an attribute by comparison to a criterion. As it relates to Category C, a measure is a standardized tool to measure or quantify healthcare processes, outcomes, patient perceptions, organizational structure, and/or systems that are associated with the ability to provide high-quality health care.

(13) Measure Bundle--A grouping of measures under Category C that share a unified theme, apply to a similar population, and are impacted by similar activities. Measure Bundles are selected by hospitals and physician practices. All Measure Bundles include required measures, and some Measure Bundles also include optional measures. [A Measure Bundle may include process measures and patient clinical outcome measures.]

(14) Measure Bundle Protocol--A master list of potential Category C Measure Bundles and measures, as well as Category D Statewide Reporting Measure Bundles and measures.

(15) Medicaid and Low-income or Uninsured (MLIU) Patient Population by Provider (PPP)--The number of MLIU individuals in a performer's system for which there was an encounter during the applicable DY.

(A) To qualify as a Medicaid individual served, the individual must be enrolled in Medicaid at the time of at least one encounter during the applicable DY.

(B) To qualify as a low-income or uninsured individual served, the individual must either be at or below 200 percent of the FPL or must not have health insurance at the time of at least one encounter during the applicable DY.

(C) If an individual was enrolled in Medicaid at the time of one encounter during the applicable DY, and was low-income or uninsured at the time of a separate encounter during the applicable DY, that individual is classified as a Medicaid individual served for purposes of MLIU PPP.

(16) Medicaid and Low-income or Uninsured (MLIU) Patient Population by Provider (PPP) Goal--The target number of MLIU individuals in a performer's system for which there will be an encounter during the applicable DY.

(17) Milestone--An objective of DSRIP performance on which DSRIP payments are based.

(18) Minimum point threshold (MPT)--The minimum number of points that a performer must meet in selecting its Category C Measure Bundles or measures, as described in §354.1713 of this division (relating to Category C Requirements for Performers).

(19) No volume--For Category C measures, the denominator is considered to have no volume if its volume is equal to zero.

(20) Performer--A Medicaid provider enrolled in Texas Medicaid that participates in DSRIP and receives DSRIP payments.

(21) RHP plan update--An RHP plan for the initial demonstration period and DY6 that is updated for DY7-8, as further described in §354.1697 of this division (relating to RHP Plan Update).

(22) Significant volume--For most Category C measures, the denominator is considered to have significant volume if its volume is greater than or equal to 30.

(23) Statewide hospital factor (SHF)--A factor used to determine the [in determining a hospital's] MPT that takes into account a hospital's MLIU inpatient days and MLIU outpatient costs compared to all hospitals, as described in §354.1713 of this division.

(24) Statewide hospital ratio (SHR)--A factor used to determine the [in determining a hospital's] MPT that takes into account whether a hospital's DY7 DSRIP valuation is higher or lower than would be expected based on the hospital's MLIU inpatient days and MLIU outpatient costs compared to other hospitals, as described in §354.1713 and in the next paragraph of this section.

(25) System--A performer's patient care landscape, as defined by the performer, in accordance with the Program Funding and Mechanics Protocol and Measure Bundle Protocol. Essential functions or departments of a performer's provider type are required components that must be included in a performer's system definition. [The system may include any combination of service locations, including hospitals, clinics, community mental health center locations, local health department locations, and contracted providers or clinics, as appropriate.]

(26) Total Patient Population by Provider (total PPP)--The total number of individuals in a performer's system for which there was an encounter during the applicable DY.

(27) Volume--For Category C measure denominators, the total number of measured units in the denominator. Volume is used to determine the size of the population for which improvement is being measured.

§354.1693. Regional Healthcare Partnerships (RHPs).

(a) An RHP has geographic boundaries as prescribed by HHSC.

(b) An RHP is composed of one anchor and other participants, which may include IGT entities, performers, and other regional stakeholders. A single entity may act in multiple roles.

(c) An IGT entity may participate in more than one RHP contingent upon HHSC approval.

(d) A performer may only participate in the RHP plan update for the RHP in which it is physically located. If a performer has physical locations in more than one RHP, the performer may be assigned to a single "home" RHP of its choosing and participate only in the RHP plan update for its "home" RHP.

(e) A provider must participate in an RHP, as described in §354.1717 of this division (relating to Uncompensated Care (UC) Hospital Requirements), to be eligible to receive a UC pool payment. However, HHSC along with the Centers for Medicare & Medicaid Services may approve exceptions to this requirement on a case by case basis.

§354.1695. Participants.

(a) (No change.)

(b) IGT entities. An IGT entity:

(1) determines the allocation of its IGT funding consistent with state and federal requirements;

(2) participates in RHP planning;

(3) if the IGT entity is itself acting as a performer, selects Category C Measure Bundles or measures in accordance with §354.1713 of this division (relating to Category C Requirements for Performers);

(4) if the IGT entity is not acting as a performer, cooperates with a performer to select Category C Measure Bundles or measures in accordance with §354.1713 of this division;

(5) provides the non-federal share of DSRIP pool payments for the entities with which it collaborates; and...
§354.1697.  RHP Plan Update.

(a) A performer may receive DSRIP only if HHSC has approved the RHP plan update for the performer's RHP.

(b) An RHP plan update must:

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

(7) include for each performer:

(A) the definition of the performer's system;

(B) a description of the performer's core activities for DY7-8;

(C) the performer's Category B total [MLIU] Patient Population by Provider (PPP) and MLIU PPP baseline data;

(D) if the performer is a hospital or physician practice, the performer's selected Category C Measure Bundles and measures, and requests for allowable changes to those Measure Bundles and measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol;

(E) if the performer is a community mental health center or local health department, the performer's selected Category C measures, and requests for allowable changes to those measures, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol;

(F) a description of the transition of the performer's DY2-6 projects to DY7-8 [its selected Category C Measure Bundles of measures];

(G) the performer's Category D Statewide Reporting Measure Bundle;

(H) the performer's DSRIP valuation amounts; and

(I) the performer's sources of non-federal funds by category and DY;

(8) include a narrative explaining the performer's rationale for its [how all of the selected] Category C Measure Bundle [Bundles] and measure selections; and [measures with]

[(A)] address the community needs outlined in the RHP plan update; and

[(B) demonstrate health care delivery transformation and improvement in the quality of care provided in that RHP; and

(9) [include the following information regarding DY7-8 remaining funds] if the RHP is allocated DY7-8 remaining funds as described in §354.1721 of this division (relating to Remaining Funds for Demonstration Years (DYs) 7-8), the information required by that section.[\]

[(A) a description of the process used to determine how the DY7-8 remaining funds allocated to the RHP will be used;]

[(B) the performers in the RHP that were allocated remaining DY7-8 funds; and

[(C) the performers or providers in the RHP that were interested in receiving remaining DY7-8 funds but were not allocated any remaining DY7-8 funds.]

§354.1701.  RHP Plan Update Modifications.

A performer may submit a request to HHSC to modify elements of the RHP plan update for the performer's RHP prospectively, as described in the Program Funding and Mechanics Protocol, including the performer's:

(1) System definition;

(2) Category B Medicaid and Low-income Uninsured (MLIU) Patient Population by Provider (PPP);

(3) Category C measure payer types for reporting milestones;

(4) Category C [pay for performance (P4P)] measure payer type for goal achievement milestones;

(5) Category C optional measures if the performer is a hospital or physician practice; or

(6) Category C measures if the performer is a:

(A) community mental health center;

(B) [or] local health department; or[\]

(C) hospital or physician practice that has received approval from HHSC to select measures, rather than Measure Bundles, from the Measure Bundle Protocol as described in §354.1713 of this division (relating to Category C Requirements for Performers).

§354.1707.  Performer Valuations.

(a) If a performer participated in DSRIP during the initial demonstration period or DY6, its [A performer's] total valuation per demonstration year (DY) [DY] for DY7 and DY8 is equal to its total valuation for DY6 with the following exceptions:

(1) If HHSC determined that a DSRIP project was ineligible to continue in DY6, the performer affected by such a determination may use the funds associated with the DSRIP project beginning in DY7.

(2) If a performer withdrew a DSRIP project between June 30, 2014, and June 30, 2016, the performer may use the funds associated with the DSRIP project beginning in DY7.

(3) If a performer participated in DSRIP during the initial demonstration period but not during DY6 and has [began DSRIP participation in DY7 with] a total valuation per DY for DY7-8 less than $250,000 [for DY7], the performer may request in the RHP plan update to increase its total valuation to up to $250,000 per DY for DY7-8 [beginning in DY7].

(b) If a performer did not participate in DSRIP during the initial demonstration period or DY6, but begins participating in DSRIP in DY7 in accordance with §354.1721 of this division (relating to Remaining Funds for Demonstration Years (DYs) 7-8), its RHP determines its valuation in accordance with §354.1721.

(c) [Bal] A performer's valuation must comport with the following funding distribution for DY7 and DY8:

Figure: 1 TAC §354.1707(c)
[Figure: 1 TAC §354.1707(b)]

(d) If a performer's RHP meets its minimum private hospital valuation per DY for DY7-8 as described in Figure: 1 TAC §354.1707(d)(2), the performer may allocate its DY7 and DY8 valuations as follows:

(1) 55 percent of its DY7 valuation and 75 percent of its DY8 valuation to Category C - Measure Bundles and Measures; and

(2) 15 percent of its DY7 valuation and 15 percent of its DY8 valuation to Category D - Statewide Reporting Measure Bundle.
§354.1711. Category B Requirements for Performers.

(a) A performer must provide the following information in the RHP plan update for its RHP to be eligible for its RHP plan update submission funds for DY7 and its Category B valuation for DY7 and DY8:

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

(b) HHSC will use the information provided by a performer in accordance with subsection (a) of this section to calculate the performer's:

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

(c) A performer's total PPP baseline is equal to the average \[\text{ PPP }\] of its total PPP for DY5 and its total PPP for DY6 with the exception described in subsection (e) of this section \[\text{ divided by 2}\].

(d) A performer's MLIU PPP baseline is equal to the average \[\text{ MLIU }\] of its MLIU PPP for DY5 and its MLIU PPP for DY6 with the exception described in subsection (e) of this section \[\text{ divided by 2}\].

(e) If a performer demonstrates good cause, the performer may request in the RHP plan update that:

(1) its total PPP baseline equal its total PPP for DY5 only and its MLIU PPP baseline equal its MLIU PPP for DY5 only; or

(2) its total PPP baseline equal its total PPP for DY6 only and its MLIU PPP baseline equal its MLIU PPP for DY6 only.

(f) \[\text{ (e) }\] A performer's MLIU PPP to total PPP ratio baseline is equal to the performer's MLIU PPP baseline, as calculated in subsection (d) or (e) of this section, divided by the total PPP baseline, as calculated in subsection (c) or (e) of this section.

(g) \[\text{ (f) }\] A performer's MLIU PPP goal per DY for DY7 and DY8 is equal to its MLIU PPP baseline, as calculated in subsection (d) or (e) of this section.

(h) \[\text{ (g) }\] A performer's allowable MLIU PPP goal variation per DY for DY7 and DY8 is calculated with consideration of the performer's:

(1) size;

(2) provider type; and

(3) MLIU PPP to total PPP ratio baseline, as calculated in accordance with subsection (f) or (e) of this section.

(i) \[\text{ (h) }\] A performer will have a MLIU PPP milestone for each DY. The valuation of the MLIU PPP milestone for a DY is 100 percent of the performer's Category B valuation \[\text{ allocation}\] for the DY.

(j) \[\text{ (i) }\] A performer must report the following to be eligible for payment of its MLIU PPP milestone for a DY:

(1) its MLIU PPP for the DY;

(2) its total PPP for the DY; and

(3) an explanation for any decrease in the performer's MLIU PPP to total PPP ratio for the DY from the calculation in subsection (i) or (j) of this section.

(k) \[\text{ (j) }\] A performer must report the information in subsection (i) or (j) of this section during the second reporting period of the DY it is reporting to be eligible for payment of the MLIU PPP milestone for the DY, with the exception that a performer may request to carry forward reporting of its MLIU PPP milestone to the first reporting period of the DY immediately following the DY it is reporting; however, if approved, the measurement period would not change.

§354.1713. Category C Requirements for Performers.

(a) Requirements for hospitals and physician practices.

(1) Measure Bundle and measure selection.

(A) A hospital or physician practice, with the exception of those described in subparagraph (i) of this paragraph, must select Measure Bundles from the Hospital and Physician Practice Measure Bundle Menu of the Measure Bundle Protocol in accordance with the requirements in subparagraphs (B)\[\text{ (4)}\] - (H) of this paragraph in the RHP plan update for its RHP.

(B) Each Measure Bundle is assigned a point value as described in the Measure Bundle Protocol.

(C) A hospital or physician practice is assigned a minimum point threshold \[\text{ (MPT) }\] \[\text{ (MP) }\] for Measure Bundle selection as described in paragraphs (5)\[\text{ (4)}\] and (6)\[\text{ (5)}\] of this subsection.

(D) A hospital or physician practice must select Measure Bundles worth enough points to meet its MPT in order to maintain its total valuation for DY7 and DY8. If a hospital or physician practice does not select Measure Bundles worth enough points to meet its MPT, its total DY7 valuation will be reduced proportionately across its RHP Plan Update and Categories B-D funds for DY7, and its total DY8 valuation will be reduced proportionately across its Categories B-D funds for DY8, based on the point values \[\text{ of number}\] of the Measure Bundles it selects \[\text{ Bundle points selected}\].

(E) A hospital or physician practice may only select a Measure Bundle for which its \[\text{ all payer}\] denominator for the baseline measurement period for at least half of the required measures in the Measure Bundle have significant volume \[\text{ meet the minimum all payer denominator size criteria as described in the Measure Bundle Protocol}\].

(F) A hospital or physician practice with a valuation greater \[\text{ of more}\] than \$2,500,000 \$2 million \[\text{ per demonstration year (DY) for DY7-8 must}\]:

(i) select at least one Measure Bundle with at least one required three-point \[\text{ standalone}\] measure for which its denominator for the baseline measurement period has significant volume; or

(ii) select at least one Measure Bundle with at least one optional three-point measure for which its denominator for the baseline measurement period has significant volume, and select at least one optional three-point measure in that Measure Bundle for which its denominator for the baseline measurement period has significant volume.

(G) A hospital or physician practice may only select an optional measure in a selected Measure Bundle for which its \[\text{ the hospital's or physician practice's all payer}\] denominator for the baseline measurement period has significant volume \[\text{ meets the minimum all payer denominator size criteria as described in the Measure Bundle Protocol}\].

(H) Only a hospital with a valuation less than or equal to \$2,500,000 \$2 million \[\text{ per demonstration year (DY) for DY7-8 may select a rural}\] Measure Bundle identified as a rural Measure Bundle.

(I) If a hospital or physician practice has a limited scope of practice, cannot reasonably report on at least half of the required measures in the Measure Bundle(s) appropriate for it based on its scope of practice and community partnerships, and consequently cannot meet its MPT for Measure Bundle selection, the hospital or physician practice may request HHSC approval to select measures, rather than Measure Bundles, from the Measure Bundle Protocol. The hospital or physician practice must submit a request for such approval to HHSC prior to the RHP plan update submission, by a date determined by
HHSC. Such a request may be subject to review by the Centers for Medicare & Medicaid Services (CMS). If HHSC and CMS, as appropriate, approve such a request, the following requirements apply:

(i) the hospital's or physician practice's total valuation for DY7 and DY8 may be reduced; and

(ii) the hospital or physician practice must select measures from the following menus of the Measure Bundle Protocol in accordance with the requirements in clauses (iii) - (v) of this subparagraph in the RHP plan update for its RHP: [in accordance with the measure selection requirements for community mental health centers and local health departments, as described in subsection (b)(1) of this section.]

(I) the Measure Bundles on the Hospital and Physician Practice Measure Menu;

(II) the Community Mental Health Center Measure Menu; or

(III) the Local Health Department Measure Menu;

(iii) each measure in a Measure Bundle on the Hospital and Physician Practice Measure Bundle Menu, and each measure on the Community Mental Health Center Measure Menu and the Local Health Department Measure Menu, is assigned a point value as described in the Measure Bundle Protocol;

(iv) the hospital or physician practice is assigned a MPT for measure selection as described in paragraphs (5) and (6) of this section; and

(v) the hospital or physician practice must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY7 and DY8. If the hospital or physician practice does not select measures worth enough points to meet its MPT, its total DY7 valuation will be reduced proportionately across its RHP Plan Update and Categories B-D funds for DY7, and its total DY8 valuation will be reduced proportionately across its Categories B-D funds for DY8, based on the point values of the measures it selects.

(2) Measure Bundle valuation. A hospital or physician practice may allocate its Category C valuation among its selected Measure Bundles in the RHP plan update for its RHP as it chooses, provided the following requirements are met:

(A) The valuation for each selected Measure Bundle must be greater than or equal to ([the Measure Bundle point value divided by the sum of all the selected Measure Bundles' point values] divided by 2) multiplied by the Category C valuation.

(B) The valuation for each selected Measure Bundle without any required or selected optional three-point [standalone] measures must be less than or equal to ([the Measure Bundle point value divided by the sum of all the selected Measure Bundles' point values] multiplied by the Category C valuation).

(C) The valuation for each selected Measure Bundle with a required or selected optional three-point measure must be less than or equal to ([the Measure Bundle point value divided by the sum of all the selected Measure Bundles' point values] multiplied by 1.5) multiplied by the Category C valuation.

(3) Measure valuation. The valuation for each measure in a selected Measure Bundle is equal to the Measure Bundle valuation divided by the number of measures in the selected Measure Bundle, so that the valuations of the measures in the selected Measure Bundle are equal, with the following exceptions:

(A) If a hospital's or physician practice's [all-payer] denominator for a required measure in a selected Measure Bundle for the baseline measurement period or a performance year has no volume [is zero], the measure is removed from the Measure Bundle, and its valuation for the applicable DY is redistributed among the remaining measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator for the baseline measurement period or performance year has significant volume [is greater than zero] for the applicable DY. The valuation for the applicable DY for each of the remaining measures in the Measure Bundle for which the hospital's or physician practice's all-payer denominator for the baseline measurement period or performance year has significant volume [is greater than zero], so that the valuations for the applicable DY in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator for the baseline measurement period or performance year has significant volume [is greater than zero] are equal.

(B) If a hospital's or physician practice's [all-payer] denominator for a required measure in a selected Measure Bundle for the baseline measurement period or a performance year has insignificant volume [does not meet the minimum all-payer denominator size criteria as described in the Measure Bundle Protocol, but is greater than zero], the measure and milestone valuations are adjusted in accordance with subsection (c)(2) [(d)(2)] of this section.

(4) Milestone valuation. The measure milestones and corresponding valuations for DY7-8 are as described in subsection (c) of this section.

(5) (4) MPTs [Minimum point thresholds (MPTs)] for hospitals.

(A) The MPT for hospitals, with the exception of those described in subparagraphs (B) and (C) of this paragraph, is calculated as follows:

(i) First, the hospital's statewide hospital factor (SHF) is equal to (.64 multiplied by (the hospital's Medicaid and uninsured inpatient days divided by the sum of all hospitals' Medicaid and uninsured inpatient days)) plus (.36 multiplied by (the hospital's Medicaid and uninsured outpatient costs divided by the sum of all hospitals' Medicaid and uninsured outpatient costs)).

(ii) Second, the hospital's statewide hospital ratio (SHR) is equal to (the hospital's DY7 valuation divided by the sum of all hospitals' DY7 valuations) divided by the SHF.

(iii) Third, the hospital's MPT is determined as follows:

(I) If the SHR is less than or equal to 3, the MPT is the lesser of:

   (a-) the DY7 valuation divided by $500,000 [the standard point valuation ($500,000)]; or

   (b-) 75.

   (II) If the SHR is greater than 3 but less than or equal to 10, the MPT is the lesser of:

   (a-) (the DY7 valuation divided by $500,000 [the standard point valuation ($500,000)] multiplied by (the SHR divided by 3)); or

   (b-) 75.

   (III) If the SHR is greater than 10 and the DY7 valuation is less than or equal to $15 million, the MPT is the lesser of:
(A) A CMHC [community mental health center (CMHC) or local health department (LHD)] must select measures from the Community Mental Health Center Measure Menu of the Measure Bundle Protocol.

(B) Each measure is assigned a point value as described in the Measure Bundle Protocol.

(C) A CMHC [or LHD] is assigned an MPT for measure selection as described in paragraph (3) of this subsection.

(D) A CMHC [or LHD] must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY7 and DY8. If a CMHC [or LHD] does not select measures worth enough points to meet its MPT, its total DY7 valuation will be reduced proportionately across its RHP Plan Update and Categories B-D funds for DY7, and its total DY8 valuation will be reduced proportionately across its Categories B-D funds for DY8, based on the point values of the measures it selects [number of measure points selected].

(E) A CMHC may only select a measure for which its denominator for the baseline measurement period has significant volume [or LHD must select at least one three-point measure].

(F) A CMHC must select at least two measures [or LHD may only select a measure for which the CMHCs or LHDs all-payer denominator for the baseline measurement period meets the minimum all-payer denominator size criteria as described in the Measure Bundle Protocol].

(G) A CMHC with a valuation greater than $2,500,000 per DY for DY7-8 must select at least one three-point measure.

2. Measure valuation. A CMHC [or LHD] may allocate its Category C valuation among its selected measures, provided the following requirements are met:

(A) The valuation for each selected measure must be greater than or equal to (the Category C valuation divided by the number of selected measures) divided by 2.

(B) The valuation for each selected one-point [non-standalone] measure must be less than or equal to the Category C valuation divided by the number of selected measures.

(C) The valuation for each selected three-point or four-point measure must be less than or equal to (the Category C valuation divided by the number of selected measures) multiplied by 1.5.

3. MPTs. A CMHC's [or LHDs] MPT is the lesser of:

(A) the CMHC's [or LHDs] DY7 valuation divided by the standard point valuation ($500,000); or

(B) 40.

(c) Requirements for local health departments (LHDs).

1. Measure selection.

(A) An LHD must select measures from:

(i) the Local Health Department Measure Menu of the Measure Bundle Protocol; or

(ii) its DY6 Category 3 pay-for-performance (P4P) measures.

(B) An LHD may not select the same measure from both the Local Health Department Measure Menu of the Measure Bundle Protocol and its DY6 Category 3 P4P measures.
(C) If an LHD’s DY6 Category 3 P4P measures include multiple versions of the same measure, the LHD may select multiple versions of that measure, but the points associated with that measure will only count once toward the LHD’s MPT.

(D) Each measure on the Local Health Department Measure Menu is assigned a point value as described in the Measure Bundle Protocol.

(E) Each LHD DY6 Category 3 P4P measure is assigned a point value as described in the Measure Bundle Protocol.

(F) An LHD is assigned an MPT for measure selection as described in paragraph (4) of this subsection.

(G) An LHD must select measures worth enough points to meet its MPT in order to maintain its total valuation for DY7 and DY8. If an LHD does not select measures worth enough points to meet its MPT, its total DY7 valuation will be reduced proportionately across its RHP Plan Update and Categories B-D funds for DY7, and its total DY8 valuation will be reduced proportionately across its Categories B-D funds for DY8, based on the point values of the measures it selects.

(H) An LHD may only select a measure for which its denominator for the baseline measurement period has significant volume.

(I) An LHD must select at least two measures.

(J) An LHD with a valuation of more than $2,500,000 per DY for DY7-8 must select at least one three-point measure.

(2) Measure valuation. An LHD may allocate its Category C valuation among its selected measures, provided the following requirements are met:

(A) The valuation for each selected measure must be greater than or equal to (the Category C valuation divided by the number of selected measures) divided by 2.

(B) The valuation for each selected one-point measure must be less than or equal to the Category C valuation divided by the number of selected measures.

(C) The valuation for each selected three-point or four-point measure must be less than or equal to (the Category C valuation divided by the number of selected measures) multiplied by 1.5.

(3) Milestone valuation. The measure milestones and corresponding valuations for DY7-8 are as described in subsection (e) of this section.

(4) MPTs. An LHD’s MPT is the lesser of:

(A) the LHD’s DY7 valuation divided by the standard point valuation ($500,000); or

(B) 20.

(d) Milestone periods.

(1) Baseline measurement periods. The baseline measurement period for a measure is calendar year 2017 with the following exceptions:[.]

(A) the baseline measurement period for a DY6 Category 3 P4P measure selected by a LHD is DY6;

(B) [(A)] a [A] performer that demonstrates good cause may request for a measure to have a shorter baseline measurement period consisting of no fewer than six months as specified in the Program Funding and Mechanics Protocol and HHSC guidance[.]

(D) any other exception specified in the Measure Bundle Protocol or one of its appendices.

(2) Performance measurement periods. The performance measurement periods for a DY7-8 measure are as follows:

(A) Performance Year (PY) 1 for a measure is calendar year 2018 unless otherwise specified in the Measure Bundle Protocol or one of its appendices,[ with the following exceptions:] 

(i) if HHSC approved the use of a delayed baseline measurement period for the measure, the measure will not have a PY1; and

(ii) any other exceptions specified in the Measure Bundle Protocol.

(B) PY2 for a measure is calendar year 2019 unless otherwise specified in the Measure Bundle Protocol or one of its appendices,[ with the following exceptions:] 

(i) if HHSC approved the use of a delayed baseline measurement period for the measure, the measure's PY2 is the 12-month measurement period immediately following the delayed baseline measurement period; and

(ii) any other exceptions specified in the Measure Bundle Protocol.

(C) PY3 for a measure is calendar year 2020 unless otherwise specified in the Measure Bundle Protocol or one of its appendices,[ with the following exceptions:] 

(i) if HHSC approved the use of a delayed baseline measurement period for the measure, the measure's PY3 is the 12-month measurement period immediately following PY2; and

(ii) any other exceptions specified in the Measure Bundle Protocol.

(3) Reporting measurement periods. The reporting measurement periods for a pay-for-reporting (P4R) measure are as follows unless otherwise specified in the Measure Bundle Protocol:

(A) Reporting Year (RY) 1 for a measure is DY7; and

(B) RY 2 for a measure is DY8.

(e) Milestone periods.

(1) The milestones and corresponding valuations for DY7-8 are as follows, with the exceptions [exception] specified in paragraphs [paragraph] (2) and (3) of this subsection:

Figure: 1 TAC §354.1713(e) [Figure: 1 TAC §354.1713(d)]

(2) If a hospital’s or physician practice’s [all-payer] denominator for a required measure in a selected Measure Bundle for the baseline measurement period or a performance measurement period has insignificant volume [year does not meet the minimum all-payer denominator size criteria as described in the Measure Bundle Protocol, but is greater than zero], the valuation for the measure’s goal achievement milestone for the DY is redistributed among the goal achievement milestones for the measures in the Measure Bundle for which the hospital’s or physician practice’s [all-payer] denominator for the baseline measurement period or performance measurement period has significant volume [year meets the minimum all-payer denominator size criteria]
for the applicable DY. The valuations for the goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator has significant volume [meets the minimum all-payer denominator size criteria] for the DY are calculated as follows:

(A) the valuation for the DY7 goal achievement milestone is equal to 50 percent of the valuation for the Measure Bundle divided by the number of measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator has significant volume [meets the minimum all-payer denominator size criteria], so that the valuations for the DY7 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator has significant volume [meets the minimum all-payer denominator size criteria] are equal; and

(B) the valuation for the DY8 goal achievement milestone is equal to 75 percent of the valuation for the Measure Bundle divided by the number of measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator has significant volume [meets the minimum all-payer denominator size criteria], so that the valuations for the DY8 goal achievement milestones for the measures in the Measure Bundle for which the hospital's or physician practice's [all-payer] denominator has significant volume [meets the minimum all-payer denominator size criteria] are equal.

(3) Measures with multiple parts. Some P4P measures have multiple parts, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol.

(A) A measure with multiple parts has one baseline reporting milestone per DY, one PY reporting milestone per DY, and multiple goal achievement milestones per DY.

(B) The valuation for each measure part's goal achievement milestone is equal to the measure's total goal achievement milestone valuation divided by the number of measure parts so that the measure parts' goal achievement milestone valuations are equal.

(C) All measure parts' baseline reporting milestones must be reported during the same reporting period.

(D) All measure parts' PY reporting milestones must be reported during the same reporting period.

(E) Each measure part's goal achievement milestone will have its own goal. Therefore, the percent of goal achieved, as described in §354.1719 of this division (relating to Disbursement of Funds) will be determined for a measure part's goal achievement milestone independently of the percent of goal achieved for the other measure parts' goal achievement milestones.

(4) A performer must report a baseline for a measure, and HHSC must approve the reported baseline for reporting purposes, before a performer can report PY1 (or PY2 if HHSC approved the use of a delayed baseline measurement period for the measure).

(A) A performer must adhere to measure specifications and maintain a record of any variances approved by HHSC prior to reporting a baseline for a measure.

(B) HHSC's approval of a reported baseline for reporting purposes does not constitute approval for a performer to report a measure outside measure specifications. If at any point HHSC or the independent assessor finds that a performer is reporting a measure outside measure specifications, reporting milestone payment and goal achievement milestone payment may be withheld or recouped while the performer works to bring reporting into compliance with measure specifications.

(5) A performer must report a P4P measure's reporting milestone and goal achievement milestone for a given PY during the same reporting period, with exceptions for P4P measures with a delayed baseline measurement period.

(f) Measure eligible denominator population.

(1) A measure's eligible denominator population must include all individuals served by the performer's system during a given measurement period.

(A) A measure may have a specified setting or a definition of active patient as specified in the Measure Bundle Protocol.

(B) A performer may not use a performer-specific facility, co-morbid condition, age, gender, or race/ethnicity subset not otherwise specified in the Measure Bundle Protocol.

(2) Reporting milestones. A performer must report its performance on a measure for the all-payer, Medicaid-only, and Low-income Uninsured-only (LIU-only) payer types to be eligible for payment of the measure's reporting milestones.

(A) A performer that demonstrates good cause may request in the RHP plan update submission to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(B) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to be exempted from reporting its performance on a measure for the Medicaid-only payer type or the LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(3) Goal achievement milestones. Payment for a P4P measure's goal achievement milestone is based on the performer's performance on the measure for the MLIU payer type.

(A) A performer that demonstrates good cause may request in the RHP plan update submission that payment for a P4P measure's goal achievement milestone be based on the performer's performance on the measure for the all-payer, Medicaid-only, or LIU-only payer type as specified in the Program Funding and Mechanics Protocol.

(B) A performer that demonstrates good cause may submit a RHP plan update modification request to HHSC to change the payer type on which payment for a P4P measure's goal achievement milestone is based as specified in the Program Funding and Mechanics Protocol.

(g) Methodology for P4P measure goal setting.

(1) A P4P measure's goals are set as an improvement over the baseline.

(2) A P4P measure is designated as either Quality Improvement System for Managed Care (QISMC) or Improvement over Self (IOS) as specified in the Measure Bundle Protocol. A P4P measure designated as QISMC has a defined High Performance Level (HPL) and Minimum Performance Level (MPL) based on national or state benchmarks. Some P4P measures will have a maintenance threshold based on benchmarks as defined in the Measure Bundle Protocol.

(3) A P4P measure's goals for its goal achievement milestones are set as follows, with the exceptions described in paragraphs (4) and (5) of this subsection:

Figure: 1 TAC §354.1713(g)(3)
(4) A performer that selects a P4P measure for which its baseline is above the maintenance threshold as defined in the Measure Bundle Protocol may either:

(A) improve following the standard QISMC or IOS goal calculation; or

(B) request to use a maintenance goal calculation by a date determined by HHSC.

(5) If a performer requests to use a maintenance goal calculation per paragraph (4) of this subsection, and HHSC approves the request:

(A) the goal for the DY7 and DY8 goal achievement milestones is statistically significant maintenance of baseline high performance as defined by a two proportion z-test with a significance level of 0.10;

(B) the performer must complete an additional cost benefit analysis related to the measure to be eligible for payment of the PY1 reporting milestone;

(C) the performer must complete a shared learning activity as described in the Program Funding and Mechanics Protocol to be eligible for payment of the PY2 reporting milestone; and

(D) the measure is not eligible for partial payment.

(6) A performer may request HHSC approval in the RHP plan update to use a numerator of zero for certain P4P measures for the baseline measurement period, as described in the Program Funding and Mechanics Protocol and Measure Bundle Protocol. If a performer receives HHSC approval to use a numerator of zero for a P4P measure for the baseline measurement period, the goal for the DY7 goal achievement milestone will be equal to the baseline for the second reporting period of DY8; and

§354.1715. Category D Requirements for Performers.

(a) There is a Category D - Statewide Reporting Measure Bundle for each provider type, as described in the Measure Bundle Protocol.

(b) Each Category D - Statewide Reporting Measure Bundle consists of one or more measures, as described in the Measure Bundle Protocol.

(c) The valuation of a performer's Category D - Statewide Reporting Measure Bundle is equal to five percent of the performer's total valuation, with the exception that if the performer's RHP maintains the total private hospitalization for its RHP, as described in Figure: 25 TAC §354.1715(c), at the time of RHP plan update submission, the performer may increase the valuation of its Category D - Statewide Reporting Measure Bundle to 15 percent of the performer's total valuation.

(d) A performer must report on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type as described in the Measure Bundle Protocol for a DY no later than the second reporting period of the DY to be eligible for payment of the measure for that DY.

§354.1719. Disbursement of Funds.

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

(e) Basis for payment of Category D. A performer must report on a measure in the Category D - Statewide Reporting Measure Bundle for its provider type, as described in the Measure Bundle Protocol, for a DY in accordance with §354.1715(d) of this division (relating to Category D Requirements for Performers) during the second reporting period of the DY to be eligible for payment of the measure for that DY.

(f) At no point may a performer receive a DSRIP payment for a milestone more than two years after the end of the DY in which the milestone is to be completed.

(g) If a performer does not complete the remaining milestones as described in §354.1711 (§354.1711(j)(1)) of this division (relating to Category B Requirements for Performers) or §354.1713 (§354.1713(g)) of this division (relating to Category C Requirements for Performers), or the Category D - Statewide Reporting Measure Bundle measures as described in subsection (e) of this section, the associated DSRIP funding is forfeited by the performer.


(h) Once the action associated with a milestone is reported by the performer as complete, that milestone may not be counted again toward DSRIP payment calculations.

§354.1721. Remaining Funds for Demonstration Years (DYS) 7-8.

(a) The total remaining funds for DYS 7 are equal to the DY7 DSRIP pool allocation described in the Program Funding and Mechanics Protocol minus the sum of the DY7 performer valuations described in §354.1707 (§354.1702(e)) of this division (relating to Performer Valuations).

(b) The total remaining funds for DYS 8 are equal to the DY8 DSRIP pool allocation described in the Program Funding and Mechanics Protocol minus the sum of the DY8 performer valuations described in §354.1707 (§354.1702(c)) of this division.

(c) (No change.)

(d) An RHP [with] allocated DY7-8 remaining funds may determine how to allocate those funds among the performers in the RHP based on the community needs assessment update. The RHP may allocate these funds to providers that did not participate in DSRIP during the initial demonstration period or DY6 and are [one of the] eligible to be performers [participants] as described in §354.1695 (§354.1695(c)(11)) of this division (relating to Participants).

(e) An RHP allocated DY7-8 remaining funds must conduct at least two public stakeholder meetings to determine how its DY7-8 remaining funds allocation will be used.

(f) A performer allocated DY7-8 remaining funds must certify that there is a source of intergovernmental transfers [IGTs] for the funds.

(g) The RHP plan update for an RHP allocated DY7-8 remaining funds must include:

(1) a description of the process used to determine how the RHP's DY7-8 remaining funds allocation will be used;

(2) the performers in the RHP that were allocated DY7-8 remaining funds and the amount of DY7-8 remaining funds allocated to each performer; and

(3) the performers or providers in the RHP that expressed interest [were interested] in receiving DY7-8 remaining funds but were not allocated any DY7-8 remaining funds.

(h) Existing and new performers allocated DY7-8 remaining funds must follow all DSRIP requirements as described in the Program Funding and Mechanics Protocol, the Measure Bundle Protocol, and the Texas Administrative Code.

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 January 5, 2018.

TRD-201800041
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 18, 2018
For further information, please call: (512) 424-6605

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC §33.27, concerning fees, assessments and reimbursements. The amended rule is proposed to clarify what fees a new license holder must pay to maintain its license.

Texas Finance Code, §151.207(b)(1), requires a money service business license holder to pay an annual license fee in an amount established by commission rule in order to maintain its license. The department currently has two rules that address what a new license holder that has not yet filed its first annual report must pay to maintain its license. Current §33.27(e)(3) provides that a new license holder that has not yet filed its first annual report must pay the minimum annual assessment as specified by §33.27(e)(1) or (2). In addition, current §33.27(h)(3) provides that a new license holder that has not yet filed its first annual report must pay an examination fee of $75 per hour for each examiner and all associated travel expenses, and that portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50 percent of the annual assessment the license holder paid pursuant to §33.27(e)(3). Having these two rules in different subsections could be confusing to new license holders, particularly because §33.27(h)(3) has to do with the fee to maintain a license, but is under the subsection related to “other fees.” Furthermore, the department believes it is more reasonable not to require a new license holder pay the minimum annual assessment shortly after it has paid a $10,000 application fee.

The proposed amendments to §33.27 would eliminate §33.27(h)(3) under the other fees subsection, and modify §33.27(e)(3) in the subsection on fees to maintain a license to clarify that a new license holder that has not yet filed its first annual report would only have to pay an examination fee of $75 per hour for each examiner and all associated travel expenses as its annual assessment.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg has also determined that, for each year of the first five years the rule amendments as proposed are in effect, the public benefit anticipated is the correction of misleading language in order to clearly communicate how an assessment for a new license holder is calculated.

For each year of the first five years that the rule amendments will be in effect, there will not be economic costs to persons required to comply with the rule amendments as proposed.

For each year of the first five years that the rule amendments will be in effect, the rule amendments will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions;
require an increase or decrease in future legislative appropriations to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; or positively or adversely affect this state's economy.
For each year of the first five years that the rule amendments will be in effect, the rule amendments will: decrease fees paid to the department; and limit an existing regulation.
There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.
To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on February 20, 2018. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.
The amendments are proposed under Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.207(b)(1), which authorizes the commission to establish an annual license fee by rule.
Finance Code §151.207 is affected by the proposed amended section.
§33.27. What Fees Must I Pay to Get and Maintain a License?
(a) - (d) (No change.)
(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).
(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table: Figure: 7 TAC §33.27(e)(1) (No change.)
(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table: Figure: 7 TAC §33.27(e)(2) (No change.)
(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay an examination fee of $75 per hour for each examiner and all associated travel expenses for an examination [the minimum annual assessment specified by paragraph (1) or (2) of this subsection, as applicable, prorated for the number of quarters remaining in the department's fiscal year after the date your license is issued].
(f) - (h) (No change.)
(i) What other fees must I pay?
(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §151.207, you must pay a late fee of $100 per day for each business day after the due date that the department does not receive your completed annual report.
(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 151, this chapter, or a department directive, you must pay for the additional examination at a rate of $75 per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.
[f] If you are a new license holder and have not yet filed your first annual report required under Finance Code, §151.207(b)(2), you must pay an examination fee of $75 per hour for each examiner and all associated travel expenses for an examination. The portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50% of the annual assessment you paid pursuant to subsection (e)(3) of this section, but not below zero.
(3) [4] If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.
(4) [5] If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 151, you must pay an examination fee of $75 per hour for each examiner and any associated travel expenses.
(j) - (k) (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 January 4, 2018.
TRD-201800034
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: February 18, 2018
For further information, please call: (512) 475-1301

TITLE 13. CULTURAL RESOURCES
PART 7. STATE PRESERVATION BOARD
CHAPTER 111. RULES AND REGULATIONS OF THE BOARD
13 TAC §111.48
The State Preservation Board (hereinafter referred to as the "Board") proposes new §111.48 of Title 13, Part 7, Chapter 111 of the Texas Administrative Code, concerning procedures for contracts requiring enhanced contract or performance monitoring.
Senate Bill 20 (84th Legislature, Regular Session, 2015) created new Government Code §2261.253(c) which requires the Board by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. New §111.48 describes the contracts that will be reported to the Board members.
Cynthia Provine, Chief Financial Officer, has determined that for the first five-year period the new rule is in effect there will be
no fiscal implications for state or local government as a result of administering this rule.

Ms. Provine has also determined that for each year of the first five year period the rule in effect, the anticipated public benefit will be enhanced focus and accountability for monitoring and management of agency’s contracts.

The proposed rule would have no anticipated impact on government growth as defined in 34 TAC §111.48. The proposed rule does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule’s applicability; and positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rod Welsh, Executive Director, State Preservation Board, P.O. Box 13286, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

This rule is proposed under the authority of Texas Government Code §443.007(b), which authorizes the Board to adopt rules concerning the properties and their contents under the Board’s control.

§111.48. Procedure for Contracts Requiring Enhanced Contract or Performance Monitoring.

(a) Contracts for the purchase or goods or services that have a value in excess of $1 million will be identified for enhanced contract or performance monitoring.

(b) Contracts that are identified for enhanced contract or performance monitoring will be reported to the Board.

(c) Contracts will be monitored in accordance with policies and procedures in the SPB contract management handbook.

(d) The Board will be notified, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this 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.

Filed with the Office of the Secretary of State on January 8, 2018.

TRD-201800045
Rod Welsh
Executive Director
State Preservation Board

Earliest possible date of adoption: February 18, 2018
For further information, please call: (512) 475-3616

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TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 163. LICENSURE

22 TAC §163.11

The Texas Medical Board (Board) proposes an amendment to §163.11, concerning Active Practice of Medicine.

Senate Bill 1148, adopted by the 85th Legislature, prohibits the Board from requiring maintenance of certification by an applicant to be eligible for a medical license. While the Board has never required compliance with specialty certification board maintenance of certification programs as a condition of licensure, proposed amendments are made to §163.11 to clarify that fact.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are clear and comport with applicable statutes.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, and rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does not expand or limit an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule’s applicability.
8. The proposed rule does not positively or adversely affect this state’s economy.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further proposed under the authority of Texas Occupations Code Annotated, Chapter 155, as amended by Senate Bill 1148 (85th Leg., R.S. 2017).

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

§163.11. Active Practice of Medicine.

(a) All applicants for licensure shall provide sufficient documentation to the Board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within either of the
last two years preceding receipt of an application [Application] for license.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks [weeks] duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the executive director or board, be eligible for:

(1) an unrestricted license if the applicant:

(A) completes remedial education, including but not limited to a mini-residency, fellowship or other structured program;

(B) presents evidence from a member board of the American Board of Medical Specialties, American Osteopathic Association Bureau of Osteopathic Specialists, American Board of Oral and Maxillofacial Surgery, the Royal College of Physicians and Surgeons of Canada, or any other certifying board that is recognized by the Texas Medical Board, of passage, within the two years prior to date of applying for licensure, of a monitored examination; or

(C) completes other remedial measures that, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

[(LA) presents evidence from a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, American Board of Oral and Maxillofacial Surgery, or by the Royal College of Physicians and Surgeons of Canada, within the two years prior to date of applying for licensure, of a monitored.;]

{[i] initial specialty certification examination (passage of all parts required), or]

{[iii] subsequent specialty written certification examination.}

[(B) completion of remedial education, including but not limited to a mini-residency, fellowship or other structured program; or]

[(C) such other remedial measures that, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.]}

(2) a license subject to one or [of] more of the following conditions:

(A) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine; or

(B) such other restrictive or remedial conditions that, in the discretion of the executive director or board, are necessary to ensure protection of the public and establish minimal competency of the applicant to safely practice medicine.

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 January 8, 2018. TRD-201800053

Scott Freshour
Interim Executive Director
Texas Medical Board
Earliest possible date of adoption: February 18, 2018
For further information, please call: (512) 305-7016

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.3, §166.6

The Texas Medical Board (Board) proposes amendments to §166.3, concerning Retired Physician Exception; and §166.6, concerning Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.

Senate Bill 1148, adopted by the 85th Legislature, prohibits the Board from requiring maintenance of certification by an applicant to be eligible for initial or renewal registration permit for a medical license. While the Board has never required compliance with specialty certification board maintenance of certification programs as a condition of registration renewal, proposed amendments are made to §166.3 and §166.6 to clarify that fact.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to have rules that are clear and comport with applicable statutes.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, and rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

(1) The proposed rules do not create or eliminate a government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rules do not require an increase or decrease in fees paid to the agency.


(6) The proposed rules do not expand or limit an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability.

(8) The proposed rules do not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.
The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further proposed under the authority of Texas Occupations Code Annotated, Chapter 156, as amended by Senate Bill 1148 (85th Leg., R.S.)(2017).

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

§166.3. Retired Physician Exception.

The registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

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

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public. [including but not limited to:

[(A) current certification by a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing within the two years prior to date request to return to active status, a monitored:

[(i) specialty certification examination;]

[(ii) maintenance of certification examination; or

[(iii) continuous certification examination;]

[(B) limitation of the practice of the requestor to specified activities of medicine and/or exclusion of specified activities of medicine;]

[(C) passage of the Special Purpose Examination (SPEX);]

[(D) remedial education, including but not limited to a mini-residency, fellowship or other structured program;]

[(E) passage of the Medical Jurisprudence Examination; and/or

[(F) such other remedial or restrictive conditions or requirements which, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.]

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public. [including but not limited to those options provided in paragraph (4)(A) - (F) of this section.]

(6) - (7) (No change.)

§166.6. Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.

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

(h) The request of a physician seeking a return to active status whose license has been placed on retired status providing voluntary charity care for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public. [including but not limited to:

[(i) current certification by a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing within the two years prior to date request to return to active status, a monitored:

[(A) specialty certification examination;]

[(B) maintenance of certification examination; or

[(C) continuous certification examination;]

[(2) limitation of the practice of the requestor to specified activities of medicine and/or exclusion of specified activities of medicine;]

[(3) passage of the Special Purpose Examination (SPEX);]

[(4) remedial education, including but not limited to a mini-residency, fellowship or other structured program;]

[(5) passage of the Medical Jurisprudence Examination; and/or

[(6) such other remedial or restrictive conditions or requirements which, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.]

(i) The request of a physician seeking a return to active status whose license has been placed on retired status providing voluntary charity care for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public. [including but not limited to, those options provided in subsection (h)(1) - (6) of this section.]

(j) (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 January 8, 2018.
CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.12

The Texas Medical Board (Board) proposes an amendment to §172.12, concerning Out-of-State Telemedicine License.

Senate Bill 1148, adopted by the 85th Legislature, prohibits the Board from requiring maintenance of certification by an applicant to be eligible for a medical license. While the Board has never required compliance with specialty certification board maintenance of certification programs as a condition of licensure, proposed amendments are made to §172.12 to clarify that fact.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enacting this proposal will be to have rules that are clear and comply with applicable statutes.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, and rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule’s applicability.

(8) The proposed rule does not positively or adversely affect this state’s economy.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, Section 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further proposed under the authority of Senate Bill 1148 (85th Leg., R.S. 2017).

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


(a) Qualifications. A person may not engage in the practice of medicine across state lines in this State, hold oneself as qualified to do the same, or use any title, word, or abbreviation to indicate or induce others to believe that one is licensed to practice across state lines in this state unless the person is actually so licensed. For a person to be eligible for an out-of-state telemedicine license to practice medicine across state lines under the Medical Practice Act, §151.056, and §163.1 of this title (relating to Definitions), the person must:

1. be 21 years of age or older;

2. be actively licensed to practice medicine in another state which is recognized by the board for purposes of licensure, and not the recipient of a previous disciplinary action by any other state or jurisdiction;

3. not be the subject of a pending investigation by a state medical board or another state or federal agency;

4. [4] be currently certified by a member board of the American Board of Medical Specialties or Bureau of Osteopathic Specialties, or by the American Board of Oral and Maxillofacial Surgery, obtained by passing, within the ten years prior to date of applying for licensure, a monitoring:
   (A) specialty certification examination;
   (B) maintenance of certification examination; or
   (C) continuous certification examination;

5. [5] have passed the Texas Medical Jurisprudence Examination;

6. [6] complete a board-approved application for an out-of-state telemedicine license for the practice of medicine across state lines and submit the requisite initial fee; and

(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.

Filed with the Office of the Secretary of State on January 8, 2018.

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Scott Freshour
Interim Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

PROPOSED RULES January 19, 2018 43 TexReg 313
CHAPTER 175. FEES AND PENALTIES

22 TAC §§175.1 - 175.3, 175.5

The Texas Medical Board (Board) proposes amendments to §§175.1, 175.2, 175.3 and 175.5, concerning Fees and Penalties.

The amendment to §175.1, concerning Application and Administrative Fees, corrects language in paragraph (1)(H)(i) so that fees related to physician-in-training permits are lowered to $200. Further language is added outlining application and administrative fees for processing licenses for medical physicists, medical radiologic technologists, non-certified technicians, perfusionists, and respiratory care practitioners.

The amendment to §175.2, concerning Registration and Renewal Fees, adds language outlining renewal fees for continuing licenses, permits, and certificates for medical physicists, medical radiologic technologists, non-certified technicians, perfusionists, and respiratory care practitioners.

The amendment to §175.3, concerning Penalties, moves language providing an exemption for individuals serving as military members to new paragraph (11). The amendments further add language outlining penalty amounts for late renewals of licenses for perfusionists, respiratory care practitioners, medical physicists, and medical radiologic technologists.

The amendment to §175.5, concerning Payment of Fees or Penalties, amends language clarifying the rule’s allowance for fee refunds applies to applicants who timely withdraw applications, in addition to other requirements. Further language is added clarifying that refunds of fees may be granted to licensees who retire or request cancellation of their licenses within 90 days of paying a renewal fee.

Scott Freshour, Executive Director for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have updated and correct fees, penalties, and exemptions reflected in the rules.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed rules do not create or eliminate a government program.
(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
(4) The proposed rules do not require an increase in fees paid to the agency. The proposed rules require a decrease in fees paid to the agency for physician-in-training permit holders.
(5) The proposed rules create a new regulation outlining specific fee amounts for certain license holders.
(6) The proposed rules do not expand, limit, or repeal an existing regulation.
(7) The proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability.
(8) The proposed rules do not positively or adversely affect this state’s economy.

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

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

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

§175.1. Application and Administrative Fees.

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:
   (A) Full physician license--$817.
   (B) Out-of-State Telemedicine license--$817.
   (C) Administrative medicine license--$817.
   (D) Distinguished Professor Temporary License--$817.
   (E) Conceded Eminence--$817.
   (F) Reissuance of license following revocation--$817.
   (G) Temporary license:
       (i) State health agency--$50.
       (ii) Visiting physician--$0--.
       (iii) Visiting professor--$167.
       (iv) National Health Service Corps--$0--.
       (v) Faculty temporary license--$552.
       (vi) Postgraduate Research Temporary License--$0--.
       (vii) Provisional license--$107.
   (H) Licenses and Permits relating to Graduate Medical Education:
       (i) Initial physician in training permit--$200 [§212].
       (ii) Physician in training permit for program transfer--$141.
       (iii) Evaluation or re-evaluation of postgraduate training program--$250.
       (iv) Physician in training permit for applicants performing rotations in Texas--$131.
   (I) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Mon-
Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(2) Physician Assistants:
   (A) Physician assistant license--$220.
   (B) Reissuance of license following revocation--$220.
   (C) Temporary license--$107.

(D) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(3) Acupuncturists/AcudetoxSpecialists/Continuing Education Providers:
   (A) Acupuncture licensure--$320.
   (B) Temporary license for an acupuncturist--$107.
   (C) Acupuncturist distinguished professor temporary license--$50.
   (D) Acudetox specialist certification--$52.
   (E) Continuing acupuncture education provider--$50.
   (F) Review of a continuing acupuncture education course--$25.
   (G) Review of continuing acupuncture education courses--$50.

(4) Non-Certified Radiologic Technician permit--$130.50.

(5) Non-Profit Health Organization initial certification--$2,500.

(6) Surgical Assistants:
   (A) Surgical assistant licensure--$315.
   (B) Temporary license--$50.

(7) Criminal History Evaluation Letter--$100.

(8) Certifying board evaluation--$200.


(10) Perfusionists:
   (A) Application and full license--$180;
   (B) Application and provisional license--$180.

(11) Respiratory Care Practitioners:
   (A) Application and certificate--$125;
   (B) Application and temporary permit--$55.

(12) Medical Radiologic Technologist:
   (A) Application and general or limited certificate--$80;

(B) Application and temporary general or limited certificate--$30.

(13) Non-Certified Radiologic Technicians: Application and placement on the General Registry--$60.

(14) Medical Physicists:
   (A) Application and initial licensing fee:
      (i) first specialty on initial application--$130;
      (ii) additional specialties on application--$50;
   (B) Temporary license application and temporary licensing fee:
      (i) first specialty on application--$130;
      (ii) additional specialties on application--$50 each.

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:
   (A) Initial biennial permit--$456.
   (B) Subsequent biennial permit--$452.
   (C) Additional biennial registration fee for office-based anesthesia--$210.

(D) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(2) Physician Assistant Registration Permits:
   (A) Initial annual permit--$272.50.
   (B) Subsequent annual permit--$268.50.

(C) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(3) Acupuncturists/AcudetoxSpecialists Registration Permits:
   (A) Initial annual permit for acupuncturist--$337.50.
   (B) Subsequent annual permit for acupuncturist--$333.50.
   (C) Annual renewal for acudetox specialist certification--$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal--$130.50.

(5) Non-Profit Health Organization biennial recertification--$1,125.
(6) Surgical Assistants registration permits:
   (A) Initial biennial permit--$561.
   (B) Subsequent biennial permit--$557.
(7) Certifying board evaluation renewal--$200.
(8) Perfusionists - License biennial renewal--$362.
(9) Respiratory Care Practitioners - Certificate renewal--$106.
(10) Medical Radiologic Technologist - General or limited certificate biennial renewal --$66.00.
(11) Non-Certified Radiologic Technician - Registry biennial renewal --$56.00.
(12) Medical Physicists: License biennial renewal:
   (A) First specialty--$260;
   (B) Additional specialties--$50 each.

§175.3. Penalties.
In addition to any other application, registration, or renewal fees, the board shall charge the following late fee penalties:
(1) Physicians:
   (A) Physician's registration permit expired for 31 - 90 days--$75.
   (B) Physician's registration permit expired for longer than 90 days but less than one year--$150.
(2) Physician Assistants:
   (A) Physician assistant's registration permit expired for 90 days or less--half the registration fee.
   (B) Physician assistant's registration permit expired for longer than 90 days but less than one year--full registration fee.
(3) Acupuncturists/Acupdetox Specialists:
   (A) Acupuncturist's registration permit expired for 90 days or less--half the registration fee.
   (B) Acupuncturist's registration permit expired for longer than 90 days but less than one year--full registration fee.
   (C) Renewal of acudetox specialist certification expired for less than one year--$25.
(4) Non-Certified Radiologic Technicians. Renewal of non-certified radiologic technician's registration expired for 1 - 90 days--$50 [§25].
(5) Certification as a Non-Profit Health Organization fee for a late application for biennial recertification--$1,000.
(6) Surgical Assistants:
   (A) Surgical Assistant's registration permit expired for 90 days or less--half the registration fee.
   (B) Surgical Assistant - registration permit expired for longer than 90 days but less than one year--full registration fee.
(7) Perfusionists:
   (A) Perfusionists license, full or provisional, expired for 90 days or less--one-fourth the renewal fee;
   (B) Perfusionists license, full or provisional, expired for longer than 90 days but less than one year--one-half the renewal fee.
(8) Respiratory Care Practitioners:
   (A) Certificate renewal, if expired for 90 days or less--one-half the renewal fee;
   (B) Certificate renewal, if expired for longer than 90 days but less than one year--full renewal fee.
(9) Medical Physicists:
   (A) Medical Physicist license expired for 90 days or less--one-half of the renewal fee;
   (B) Medical Physicist license expired for 91 days but less than on year--full renewal fee;
(10) Medical Radiologic Technologists:
   (A) Certificate renewal, if expired for 90 days or less--one-half the renewal fee;
   (B) Certificate renewal, if expired for longer than 90 days but less than one year--full renewal fee.
(11) An individual who holds a license issued by the board is exempt from any penalty for failing to renew the license in a timely manner if the individual establishes, to the satisfaction of the board, that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

§175.5. Payment of Fees or Penalties.
(a) Method of Payment. Fees paid online must be submitted by credit card, electronic check, or debit card, as required by the online application. All other licensure fees or penalties must be submitted in the form of a money order, personal check, or cashier's check payable on or through a United States bank. Fees and penalties cannot be refunded except as provided in subsection (c) of this section. If a single payment is made for more than one individual permit, it must be made for the same class of permit and a detailed listing, on a form prescribed by the board, must be included with each payment.
(b) Additional Fees Based on Method of Payment.
(1) Online payments. Applicants and licensees who submit payments online may be subject to convenience fees set by the Department of Information Resources, that are in addition to the fees listed in §§175.1 - 175.3 of this title (relating to Application and Administrative Fees, Registration and Renewal Fees and Penalties).
(2) Payments submitted for hard-copy registration. Licensees who choose to register on paper if online processing is available will be subject to an additional fee of $50 collected by the board, in addition to the fees listed in §§175.1 - 175.3 of this title.
(c) Refunds. Refunds of fees may be granted under the following circumstances:
(1) Administrative error by the Board;
(2) Licensure applicants who timely withdraw their applications and do not appear before the Licensure Committee [and who withdraw their applications] and request a refund within 30 days of being notified by board staff that they are ineligible for licensure;
(3) Applicants who withdraw a licensure application after applying for multiple types of licensure at the same time but then either
elect to pursue only one type of license or the Board approves one type of license before completing the review of the other applications;

(4) Applicants who apply for temporary licenses but do not receive a temporary license due to the issuance of full licensure;

(5) Licensees who retire or request cancellation of their licenses within 90 days of paying the renewal/registration fee;

(6) Applicants or licensees who die within 90 days of having paid a fee;

(7) If the applicant or licensee has died more than 90 days after having paid a fee and a spouse or personal representative has submitted a written request for a refund demonstrating good cause for a pro-rated refund; or

(8) Applicants who withdraw their applications within 45 days of initial application.

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 January 8, 2018.

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Scott Freshour
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CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

SUBCHAPTER E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES

The Texas Medical Board (Board) proposes amendments to Chapter 177, Subchapter E, Physician Call Coverage Medical Services §177.18 and §177.20 and proposes the repeal of §177.19.

The amendments are proposed to provide a more flexible framework for call coverage agreements between physicians practicing in Texas so as to provide continuity of care to patients during a regular treating physician’s absence, while ensuring the covering physician’s accountability for meeting the standard of care and documenting the care provided during the call coverage period. The amendments propose to eliminate the two-model approach under §177.20(b), allow all call coverage agreements to be contracted orally or in writing, and eliminate the requirement that certain agreements require real-time access to a patient’s medical records at the time of the call coverage period.

Section 177.18, Purpose and Scope - Proposed "clean up" revisions are made to the section in order to simplify the text.

Section 177.19, Definitions - §177.19 is proposed for repeal, as the definitions are found in §177.1, of this title (relating to Definitions).

Section 177.20, Call Coverage Minimum Requirements - Proposed amendments to subsection (a) proposes to delete language stating that the covering physician is responsible for meeting the standard of care. The language proposed for deletion is unnecessary, as it is well-established that a physician providing care to a patient is liable for meeting the standard of care, regardless of whether the treatment is provided during a period of call coverage. However, the regular treating physician (who is a party to a call coverage agreement with the covering physician and requested coverage, or is part of a group practice which is a party to such a call coverage agreement) will not be liable for the covering physician’s care provided during the call coverage period and the proposed deletion is not intended to change that fact. Other language concerning a required report about care provided during the period of call coverage is proposed for deletion and is added to new subsection (b). Language stating that the duty to provide the report is the sole duty of the covering physician is deleted, as such language is redundant.

New proposed subsection (b) provides that the covering physician must provide to the patient’s primary physician(s) who is a party to the CCA a report about the medical intervention or advice provided. Further language is added providing that parties to the CCA can determine the timing and method in which the report is provided and who should receive the report.

The proposed amendments will allow greater flexibility for the parties to the call coverage agreement to determine the appropriate reporting methods and timing.

Other language requiring that a report be made part of the patient’s medical records is proposed for deletion as it will be redundant in light of the new language proposed.

Current subsection (b), which sets out the call coverage models and related requirements, is proposed for deletion. The language proposed for deletion includes requirements that real-time access be provided to a regular treating physician’s electronic medical record if the agreement is made between physicians practicing in different specialties or lacks reciprocal arrangements between the parties. The deletion of such requirements will especially assist those physicians practicing in rural areas who may not be able to easily arrange call coverage with physicians in the same or similar specialties or provide reciprocity, and who also may lack the ability to have real-time access to another physician’s medical record system.

The board’s intent in repealing this language is to provide a more flexible rule that will allow expanded call coverage arrangements, including those for rural physicians, while continuing to maintain important minimum requirements necessary to ensure that the covering physician remains accountable for taking important steps in relaying certain information to the patient and the regular treating physician at the end of the call coverage period. This will better ensure continuity of care and the arrangement of timely follow up care. The regular treating physician remains responsible for ensuring that the covering physician’s reports and information about such call coverage encounters are made a part of the patient’s medical record.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing this proposal will be to continue to expand call coverage arrangements in Texas, allowing increased options for providing safe and quality medical care to Texas citizens during a treating physician’s temporary absence. The public benefit further anticipated as a result of enforcing the sections will be to provide improved guidance to all physicians regarding minimum requirements for all physician call coverage being provided in Texas, which will improve patient safety and quality of medical care.
Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, the agency has determined the following:

(1) The proposed rules do not create or eliminate a government program.
(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
(4) The proposed rules do not require an increase or decrease in fees paid to the agency.
(6) The proposed rules limit and repeal an existing regulation. The proposed rules limit and repeal existing regulation requiring (A) real-time access to medical records for certain call coverage agreements; (B) written, formal agreements containing certain minimum terms for call coverage between physicians who are not in the same or similar specialty, or who do not have a reciprocal arrangement.
(7) The proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability.
(8) The proposed rules do not positively or adversely affect this state’s economy.

Mr. Freshour has also determined that for the first five-year period the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed will be costs associated with preparing a call coverage arrangement. The effect on small or micro businesses or rural communities will include costs associated with preparing a call coverage agreement. However, because the rules would eliminate formal written agreements, real-time access to a patient’s medical records, and other requirements for certain arrangements lacking reciprocity or similar practice area between the parties, the overall costs faced through the enforcement of the proposed rules are expected to decrease.

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

22 TAC §177.18, §177.20
The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.18. Purpose and Scope.
(a) Purpose. [Pursuant to §153.001 of the Act, the Board is authorized to adopt rules relating to the practice of medicine.] The purpose of this subchapter is to set forth minimum requirements relating to a physician’s provision of call coverage services for another physician's established patients. [Advances in technology have enabled a more expansive model of call coverage, requiring that minimum standards be adopted so as to better protect and promote the health and safety of the public while accounting for such technological advances.] In setting forth these rules, the board recognizes that a call coverage model outside of the traditional office setting between physicians who are not of the same specialty and do not provide reciprocal call coverage for each other can provide effective and safe patient care.[] contingent upon the physician meeting the standard of care for the treatment provided under an agreement, and minimum standards being in place that correspond to the level of care being provided. Such standards will allow increased access to healthcare, while maintaining accountability for communication between physicians, in order to provide continuity and coordination of care, thereby protecting patient safety and health.

(b) Scope. This chapter applies to all physicians providing call coverage in Texas, regardless of the nature and scope of technology being used to provide care to patients through the call coverage relationship.

§177.20. Call Coverage Minimum Requirements.
[(a) Generally.]
[(a) (1) Physicians may provide medical services through a call coverage agreement (CCA) to established patients of another [a] physician who requests the coverage. The CCA may be oral or written. [A covering physician who enters into a CCA is responsible for meeting the standard of care for patient care provided during such call coverage.]

(b) (2) The covering physician must provide to the patients’ primary physician(s) who are parties to the CCA a report about the medical intervention or advice provided. The parties to the CCA can determine the timing and method in which the report is provided and who should receive the report. [is required to relay a report to the physician who requested the coverage regarding the care provided. The covering physician may satisfy the report requirement described in this subsection by updating the patient’s medical record, sending a written report, or providing the information to the physician who requested the coverage through other methods. The duty to provide the report is the sole, exclusive obligation of the covering physician, and cannot be delegated to or satisfied by the patient or patient representative providing a report or otherwise recounting the encounter to the physician who requested coverage. The physician who requested the call coverage must make the report provided by the covering physician a part of the patient’s medical record.]

[(b) Call Coverage Models.]

[(1) Non-Reciprocal Call Coverage Model. For physicians who enter into a CCA and are not of the same specialty or similar specialties, or do not require reciprocal medical call coverage services for the covering physician’s patients through the CCA, the CCA must be in writing and at a minimum include terms that:]}

[(A) establish a covering physician’s responsibility for meeting the standard of care in providing call coverage for the patients of the physician requesting coverage;]

[(B) provide a list of all of the physicians that may provide the call coverage under the CCA;]

[(C) require that at the time of the service provided, the covering physician have access to the necessary medical records related to the patient who is being treated under the CCA;]

[(D) for non-emergency care provided for a diagnosis previously made by the physician who requested call coverage, require the covering physician to furnish a report to the physician requesting]
the call coverage within 7 days from the end of each call coverage period;]

[(E) for non-emergency care provided for an injury, illness, or disease not previously diagnosed by the physician who requested call coverage, require the covering physician to furnish a report to the physician who requested the call coverage within 72 hours from the end of each call coverage period; and]

[(E) for emergency care provided, require the covering physician to furnish a report to the physician who requested call coverage within an appropriate time period according to the circumstances of the emergency situation;]

[(G) Reciprocal Call Coverage Model]

[(A) For physicians who enter a CCA and are of the same specialty or similar specialties and require reciprocal medical call coverage services for the covering physician's patients, the CCA may be oral or written.]

[(B) Terms of the CCA at a minimum must establish the covering physician's responsibility for meeting the standard of care for patient care provided during such call coverage and relaying a report to the physician who requested the coverage regarding such patient care provided within an appropriate amount of time from the conclusion of each call coverage period.]

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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Scott Freshour
Interim Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

22 TAC §177.19
The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.
§177.19. 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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TITLE 28. INSURANCE
PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
CHAPTER 134. BENEFITS—GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS
SUBCHAPTER F. PHARMACEUTICAL BENEFITS
28 TAC §§134.500, 134.530, 134.540

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes to amend 28 Texas Administrative Code (TAC) §134.500, Definitions; and proposes conforming amendments to 28 TAC §134.530, Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks; and 28 TAC §134.540, Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks. The proposed changes amend the definition of the closed formulary to exclude any prescription drug created through compounding, and to require preauthorization for all prescription drugs created through compounding.

An informal working draft of the rule text was published on the division’s website on June 16, 2017, and the division received 22 comments. If adopted, these amendments become effective July 1, 2018.

BACKGROUND AND PURPOSE. House Bill 7 (HB 7), enacted by the 79th Texas Legislature, Regular Session, amended Labor Code §408.028, Pharmaceutical Services, to require that the commissioner of workers' compensation adopt a closed formulary. After extensive collaboration with system participants, including medical providers and insurance carriers, the commissioner adopted a series of rules to implement the closed formulary and transition injured employees’ claims to the closed formulary.

Implementation of the closed formulary has had a significant effect on the use of pharmaceuticals in the Texas workers' compensation system. Cost for pharmaceuticals has decreased significantly since the initial applicability of the closed formulary. Likewise, the use of opioids and other potentially addictive drugs has decreased dramatically. These changes have been monitored through a series of reports issued by the Texas Department of Insurance Workers' Compensation Research and Evaluation Group (REG).

From 2010 to 2015, total payments for all prescriptions decreased by 38%. In contrast, total payments for compounded drugs increased by 98% over the same time period.

Pharmacy services for new claims (by injury year):
Between Fiscal Injury Year (FIY) 2011 (pre-formulary) and FIY 2012 (post-formulary), the number of injured employees receiving N-drugs (drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates) decreased by 67%.
N-drug costs decreased by 78%, and N-drug costs as a percentage of all drug costs decreased by 74% (from 20% of total to 5% of total).

The average number of N-drug prescriptions per claim decreased by 32%.

The number of N-drug prescriptions decreased by more than 70% across all drug groups.

Pharmacy services for all claims (new and legacy claims by service year):

Between Fiscal Service Year (FSY) 2011 (pre-formulary) and FSY 2014 (post-formulary for legacy claims), the number of injured employees receiving N-drugs decreased by 83%.

The number of N-drug prescriptions decreased by 85%.

N-drug costs decreased by 80%. The number of N-drug prescriptions decreased by more than 80% in all drug groups. Costs decreased by more than 70% in all drug groups.

As a result of concerns expressed by system participants and the division's obligation to monitor the closed formulary, generally, analysis of compounded drug activity was undertaken based on pharmacy data collected by the division. The following observations, presented by the division to the Texas House of Representatives Business and Industry Committee, are noteworthy.

Compounded drug payments increased from $5.87 million (4% of total prescription reimbursement) in calendar year (CY) 2010 to $11.6 million (12% of total prescription reimbursement) in CY 2015.

Pharmacy medical billing data indicates a 14% increase in the number of compounded drugs paid from CY 2010 to CY 2014.

Reimbursement per compounded drug increased 141% from CY 2010 to CY 2015 ($316 to $760).

From FY 2010 to FY 2014, ingredient costs for a selected group of ten commonly compounded drugs increased between 82% and 1,474%.

Per the division's analysis, as the use of compounded drugs for work-related injuries has increased over the last five years, the cost of compounded drugs as a percentage of total pharmacy costs has more than doubled.

In response to these findings, the division initiated a plan-based audit of several physicians prescribing compounded drugs in the system. The audit was conducted by the division's Office of the Medical Advisor.

Under Labor Code §408.021, Entitlement to Medical Benefits, an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. More specifically, an injured employee is entitled to health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery; or enhances the ability of the employee to return to or retain employment.

While entitlement to healthcare does extend to, and include, compounded drugs, compounded drugs are not recommended as a first-line therapy by the current edition of the division's adopted treatment guidelines, the Official Disability Guidelines - Treatment in Workers' Comp (ODG), and the medical necessity and efficacy of compounded drugs is not well-established per evidence-based medicine standards.

The purpose of the Compound Medications Plan-Based Audit was to promote the delivery of quality health care in a cost-effective manner, including protection of injured employee safety; to ensure that doctors adhere to the ODG / Appendix A, ODG Workers' Compensation Drug Formulary and medically-accepted standards of care for prescribing compounded drugs; and to determine the appropriateness of medical decision-making related to the prescription of compounded drugs by doctors or those acting under their supervision. The division found that prescribing doctors selected for the audit generally did not demonstrate or document the efficacy or medical necessity of the prescribed compounded drugs dispensed to injured employees.

The proposed amendments are necessary to ensure that compounded drugs are prescribed to injured employees only when reasonably required and medically necessary to treat the injured employee's injury. Preauthorization of compounded drug prescriptions assures that the prescription comports with the commissioner's adopted treatment guidelines or the network's treatment guidelines and other treatment standards outlined in the Insurance Code and Texas Administrative Code. Preauthorization may also apply downward pressure on compounded drug system costs because only compounded drugs determined to be medically necessary would be dispensed to injured employees. Of considerable importance, these rule amendments will clarify for stakeholders the division's requirements regarding compounded drug in the closed formulary.

Currently, §134.530, Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks, and §134.540, Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks, require preauthorization for "any compound that contains a drug identified with the status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG)/Appendix A, ODG Workers' Compensation Drug Formulary, and any updates." The division does not currently require preauthorization for compounded drugs that do not contain an "N" drug. The proposed rule amendments will require preauthorization for all compounded drugs prior to being dispensed, including compounded drugs that do not contain an "N" drug.

The most efficient means for requiring preauthorization is to amend the definition of closed formulary contained in §134.500, Definitions, to exclude not only compounded drugs that contain N-status drugs, but all compounded drugs. By making conforming changes to §§134.530 and 134.540, all compounded drugs will require preauthorization prior to dispensing.

Therefore, the division proposes to amend §134.500 to exclude from the closed formulary "any prescription drug created through compounding." The division proposes using the phrase "any prescription drug created through compounding" rather than "compound drug" or "compound" because "compounding" is a defined term. In §134.500, "compounding" is defined as the preparation, mixing, assembling, packaging, or labeling of a drug or device under a number of specified circumstances. By contrast, "compound drug" and "compound" are not defined terms in the Texas Workers Compensation Act or division rules and using them would produce more confusion than clarity within the regulated community. The phrase "compound drug" as used in this preamble is shorthand for "any prescription drug created through compounding" and is the term used in the REG's most recent study on the topic.

Section 134.530(b)(1) and §134.540(b) require preauthorization for drugs excluded from the closed formulary. Therefore, the
effect of amending the definition of the closed formulary to exclude any prescription drug created through compounding is to require preauthorization of these drugs before they are dispensed. This proposed change does not prohibit the use of compounded drugs for injured employees when medically necessary; however, it does require that the medical necessity be determined prior to dispensing these drugs.

Prescriptions for compounded drugs not requiring preauthorization that are written before July 1, 2018, and refills for those prescriptions, will not be impacted by this rule change. However, any prescription drug created through compounding will require preauthorization when both prescribed and dispensed on or after July 1, 2018. The delayed applicability date should allow sufficient time for the prescribing doctor, injured employee, and insurance carrier to revisit and review an injured employee's need for specific prescription compounded drugs. As compounded drugs transition to the preauthorization process, the likelihood of unreasonable risk of medical emergency resulting from an adverse determination is low. However, an unreasonable risk of medical emergency triggered by an adverse determination of a preauthorization request for a previously prescribed and dispensed compounded drug can be addressed promptly through the process outlined in §134.550, Medical Interlocutory Order.

Mr. Matthew Zurek, Executive Deputy Commissioner for Health Care Management, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed new sections. Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments, as described below.

Mr. Zurek has determined that for each year of the first five years the proposed amendments are in effect, there will be a number of public benefits. The public benefits anticipated as a result of the proposed amendments include greater uniformity and cost certainty in the prescribing and dispensing of compounded drugs to injured employees. Additionally, the division anticipates the proposed amendments will facilitate the appropriate use of compounded drugs in the Texas workers' compensation system, resulting in improved quality of care, improved return-to-work outcomes, and fewer disputes.

These proposed amendments will help improve the quality of medical care provided to injured employees throughout the system. When compounded drugs that are not included in the pharmacy closed formulary are prescribed, injured employees can be assured that the medical necessity of the prescribed drug has been reviewed. By adding this medical review check point, the safe use of the compounded drug increases because the injured employee's use of the prescription is subject to an additional level of medical necessity review. Collaboration between the pharmacist, prescribing doctor, and the utilization review agent in such situations assures the best interests of the injured employee. Finally, preauthorization of compounded drugs should serve to encourage full consideration of alternative pharmaceutical options presumed reasonable under the division's and certified networks' treatment guidelines, as well as compliance with these treatment guidelines.

This proposal may affect the following system participants: 1) injured employees; 2) employers; 3) health care providers (including prescribing physicians and compounding pharmacies); 4) insurance carriers; 5) utilization review agents; and 6) independent review organizations (IROs).

Injured employees should benefit from a system that provides consistent preauthorization requirements for compounded drugs. An added benefit for the injured employee is the certainty of medical necessity provided through the preauthorization process. Additionally, the formulary continues to offer the injured employee access to the complete spectrum of reasonable and necessary pharmaceuticals. Physicians will not be prohibited from prescribing compounded drugs when the prescriber demonstrates that compounded drugs are a medically necessary treatment option for an injured employee. Injured employees benefit when they receive timely, appropriate care which facilitates return to work.

Employers also benefit when injured employees receive timely, appropriate care which facilitates return to work, and may realize indirect benefits through decreased premiums as a result of decreased medical benefit and indemnity costs through improved delivery of health care.

Prescribing doctors should benefit from adoption of the proposed amendments and the clarification of preauthorization requirements in the Texas workers' compensation system. This clarity allows prescribing doctors to better coordinate the needs of injured employees, with the dispensing of necessary drugs, and management of the prescribing doctor's role in the preauthorization process. Though there is a potential for new administrative costs related to the preauthorization process, the amount of this cost is dependent upon the specific business practices of the physician's office. Currently, any drug that does not require preauthorization is subject to retrospective utilization review. Thus, potential costs related to the preauthorization process should be offset to the extent that physicians were previously required to provide statements of medical necessity in the retrospective review process. In either instance, prescribing doctors would be providing information and rationale to the utilization review agent in the manner outlined in Chapter 10, Subchapter F and §§134.500, 134.520, 134.530, 134.540 and 134.600 of this title.

Pharmacists should benefit from the proposed amendment. Currently, pharmacists are uncertain as to preauthorization requirements for compounded drugs and the applicability of treatment guideline recommendations. The proposed amendment clarifies that compounded drugs are excluded from the pharmacy closed formulary so that preauthorization is required. This clarification provides administrative certainty as to which drugs require preauthorization, and when. Further, pharmacists will benefit by the avoidance of any future litigation costs relating to compounded drugs and their potential investigational or experimental status.

Clear preauthorization requirements will decrease the potential of reimbursement denials for drugs excluded from the pharmacy closed formulary. Data from the division's medical billing database shows that in 2016, approximately 25 percent of compounded drugs billed were denied by the insurance carrier retrospectively. Pharmacy charges for these denied prescriptions totaled approximately $6,000,000. During 2016, compounded drugs were reimbursed at approximately 83% of billed charges. Therefore, based on the 2016 reimbursement rate, pharmacies' loss of reimbursement for these prescriptions was estimated at $5,000,000. The categorical preauthorization requirement for compounded drugs should eliminate this economic loss because issues regarding the medical necessity of

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a compounded drug will be addressed before the compounded drug is dispensed. However, pharmacies may incur some administrative costs as a result of the proposed amendments. There is a potential for additional administrative costs related to the preauthorization process for pharmacies when they submit preauthorization requests for compounded drugs that did not previously require preauthorization. The amount of this cost is dependent upon the specific business practices of the pharmacy.

Additionally, health care providers (including prescribing doctors and pharmacists) currently pay in advance for IRO reviews regarding medical necessity disputes involving retrospective denials of health care; however, insurance carriers pay for IRO reviews related to preauthorization. This rule amendment, requiring preauthorization of compounded drugs, should eliminate the need for retrospective medical necessity dispute requests involving compounded drugs and, thus, the health care provider's responsibility for their current costs.

Health care providers, other than pharmacists or prescribing doctors, are unlikely to see any additional costs, and benefits would likely be indirect and realized as overall system improvements.

Insurance carriers should benefit from additional administrative clarity regarding preauthorization requirements for pharmaceuticals. Once a compounded drug requiring preauthorization is approved, no dispute exists regarding the medical necessity of the approved drug. In addition, carriers may realize cost savings if this change to the pharmacy closed formulary alters prescribing patterns so that over-utilized compounded drugs not preferred as a first-line treatment are passed over by prescribing physicians in favor of generally less expensive drugs included in the pharmacy closed formulary. Further, insurance carriers will benefit by the avoidance of any future litigation costs relating to compounded drugs and their potential investigational or experimental status.

Although the long term benefits of this change are difficult to quantify because they focus on cost avoidance and general system process improvements, preauthorization review of the use of compounded drugs should result in a decrease in the use of compounded drugs over time. However, insurance carriers may also experience increased administrative costs associated with implementation of the proposed rule amendment.

According to the REG's May 2017 Baseline Evaluation of the Utilization and Cost Patterns of Compounded Drugs, there were 20,751 compounded drug prescriptions in the workers' compensation system in 2016. Of these prescriptions, approximately 10% required preauthorization because they contained a status "N" drug. This means that approximately 18,600 compounded drug prescriptions did not require preauthorization. Under the proposed amendments, all 20,751 compounded drug prescriptions would have to be preauthorized before being dispensed.

Any compounded drug prescription that is included in the pharmacy closed formulary is currently subject to retrospective review. However, if the proposed rule is adopted, these reviews would be conducted prospectively. If prescription patterns remain unchanged, approximately 20,000 preauthorization requests for compounded drugs may be processed in the first 12 months after the rule becomes effective. A worst case cost scenario for the preauthorization of compounded drugs excluded from the pharmacy closed formulary would be 20,000 preauthorization reviews multiplied by $120 per review (a standard industry estimated average cost for preauthorization reviews is $60 - $120 per review). Thus, the fiscal impact could be as much as $2.4 million but as little as $1.2 million for 20,000 preauthorization reviews. However, changes in prescription patterns by doctors may result in a reduction in the amount of requests to use compounded drugs, which would reduce the financial impact of the proposed rule on the system. There could be additional costs for insurance carriers if pharmacological management for injured employees is not utilized or is unproductive.

Ultimately, the net costs to insurance carriers for preauthorization of these claims will be the difference between the new preauthorization costs less the existing retrospective review costs. These costs are unique to the individual business practices of each insurance carrier as each utilizes unique retrospective review procedures.

In addition, Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by: (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total cost imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the division has determined that the proposed amendments will have a cost to insurance carriers, prescribing doctors, and pharmacies. However, Government Code §2001.0045(c)(6) states that the section does not apply to a rule that “is necessary to protect the health, safety, and welfare of the residents of this state.” The division has determined that the proposed amendments are necessary to ensure compounded drugs prescribed to injured employees are medically necessary and appropriate, which will protect injured employees' health, safety, and welfare. As a result, Government Code §2001.0045 does not apply to the proposed amendments and the division is not required to offset costs.

In accordance with Government Code §2006.002(c), the division has determined that adoption of the proposed amendments may have a direct, adverse economic impact on insurance carriers, prescribing doctors, and pharmacies who qualify as small or micro-businesses, as well as rural communities who may be self-insured insurance carriers. The division’s cost analysis and resulting estimated costs in the Public Benefit and Cost Note, above, is equally applicable to small and micro-businesses, and also rural communities. Because the division has determined that the proposed amendments may have an adverse economic impact on small and micro-businesses and rural communities, this proposal contains the required economic impact statement and regulatory flexibility analysis.

Based on a report run on September 22, 2017, on Texas-licensed insurance carrier's December 31, 2016 annual statements to the Texas Department of Insurance, department records show there are 10 insurance carriers writing workers' compensation and excess workers' compensation business in Texas with total national premiums (workers' compensation and other lines of business) of less than $6 million. As of September 20, 2017, Texas Comptroller of Public Accounts data found at https://fmx.cpa.state.tx.us/fmx/legis/econoefect/2007_oct/naicscodes.php shows that the State of Texas had 15,530 physician's offices, of which 14,724 qualify as small businesses, and 3,083 health and personal care stores (including pharmacies and drug stores), of which 2,924 qualify as small businesses. According to the United States Census Bureau, Texas has scores of municipalities with a population of less than 25,000.
According to division records, there are no certified self-insured employers that would be considered small or micro businesses. There will be no difference in the cost of compliance between a large, small, or micro-business as a result of the proposed amendments. To alleviate the adverse economic cost that the proposed amendments may have on small or micro-businesses or rural communities, the division considered: (i) not adopting the proposed amendments; (ii) implementing different requirements or standards for the affected small and micro-businesses and rural communities; and (iii) exempting small and micro-businesses and rural communities from the requirements of the proposed amendments. Under Government Code §2006.002(c-1), an agency is required to consider alternative regulatory methods only if the alternative methods are consistent with the health, safety, and environmental and economic welfare of the state. The division has determined that the proposed amendments substantially contribute to the health, safety, and welfare of the state by ensuring that injured employees are receiving care that is medically necessary and appropriate.

Under Labor Code §408.021(a), an injured employee is entitled "to all health care reasonably required by the nature of the injury as and when needed" and "to health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery; or enhances the ability of the employee to return to or retain employment." The purpose of the proposed amendments is to ensure that compounded drugs prescribed to injured employees are medically necessary and efficacious, and any variance in the requirements would defeat that purpose. Therefore, because this rulemaking is necessary to protect the health, safety, and welfare of the residents of this state, the division has determined that there are no regulatory alternatives to its proposal which will sufficiently protect the health, safety, and environmental and economic welfare of the state.

Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed amendments will not create or eliminate a government program and will not require the creation or elimination of existing employee positions. The proposed amendments will not require an increase or decrease in future legislative appropriations to the division and will not result in an increase or decrease in fees paid to the division.

The proposed amendments do not create a new regulation because the existing closed formulary rules include preauthorization requirements for drugs excluded from the closed formulary. The new amendments build on existing regulation and require that all drugs created through compounding be preauthorized before they are dispensed. Currently, only compounded drugs that contain an N-drug require preauthorization. Therefore, the proposed amendments expand an existing regulation.

The proposed amendments increase the number of individuals subject to the rule's applicability. The division anticipates that the proposed amendments will positively affect the state's economy by ensuring that only medically necessary compounded drugs are prescribed and dispensed to injured employees. This increased certainty that a prescribed compounded drug will serve its intended purpose should result in increased resolution of work-related injuries and, therefore, improved return-to-work outcomes.

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

If you would like to submit written comments on this proposal, please submit your comments by 5:00 p.m. CST on February 20, 2018. Send written comments by email to rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

The division will conduct a public hearing on this rulemaking on Thursday, February 15, 2018, in the Tippy Foster Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. The public hearing will begin at 10:00 a.m. The division will consider written comments and public testimony presented at the hearing. The division provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing please contact Maria Jimenez at (512) 804-4703 at least two business days prior to the hearing date. The hearing will also be audio streamed; to listen to the audio stream, access the DWC Calendar at www.tdi.texas.gov/wc/events/index.html.

Amended §§134.500, 134.530, and 134.540 are proposed under the authority of Labor Code §402.00111, Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.00128, General Powers and Duties of Commissioner; Labor Code §402.061, Adoption of Rules; Labor Code §402.061, Entitlement to Medical Benefits; Labor Code §402.078, Pharmaceutical Services; Labor Code §413.011, Reimbursement Policies and Guidelines; Treatment Guidelines and Protocols; Labor Code §413.013, Programs; Labor Code §413.014, Preauthorization Requirements; Concurrent Review and Certification of Health Care; Labor Code §413.051, Standards of Reporting and Billing; Insurance Code, Chapter 1305, Workers' Compensation Health Care Networks; Insurance Code §4201.054, Workers' Compensation Benefits; and Occupations Code §551.003, Definitions.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.00116 states that the commissioner of workers' compensation is the division's chief executive and administrative officer and shall administer and enforce the Texas Workers' Compensation Act, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner of workers' compensation.

Labor Code §402.00128 states that the commissioner of workers' compensation shall conduct the daily operations of the division and otherwise implement division policy and, among other functions, may delegate; assess and enforce penalties; and enter appropriate orders.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.
Labor Code §408.021 states that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code §408.028 states that the commissioner of workers’ compensation by rule shall adopt a closed formulary under §413.011 and that rules adopted by the commissioner of workers’ compensation shall allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee’s compensable injury. In addition, this section states that the commissioner of workers’ compensation shall by rule require the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law.

Labor Code §413.011 requires the commissioner of workers’ compensation to adopt by rule treatment guidelines and return-to-work guidelines and medical policies designed to ensure the quality of medical care and to achieve effective medical cost control.

Labor Code §413.013 requires the commissioner to establish by rule a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services, and its monitoring.

Labor Code §413.014 states that the commissioner of workers’ compensation by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. If a specified health care treatment or service is preauthorized as provided by this section, that treatment or services is not subject to retrospective review of the medical necessity of the treatment or service.

Labor Code §413.053 states that the commissioner by rule shall establish standards of reporting and billing governing both form and content.

Insurance Code, Chapter 1305 is the Workers’ Compensation Health Care Network Act and contains treatment guidelines and authorization requirements applicable to certified networks.

Insurance Code §4201.054 states that the commissioner of workers’ compensation shall regulate as provided by Chapter 4201 a person who performs utilization review of a medical benefit provided under Title 5, Labor Code, and that the commissioner of workers’ compensation may adopt rules as necessary to implement section 4201.054.

Occupations Code §551.003 provides the definitions for "compounding" and "substitution."

§134.500. Definitions.

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

(1) Brand name drug--A drug marketed under a proprietary, trademark-protected name.

(2) Certified workers’ compensation health care network (certified network)--An organization that is certified in accordance with Insurance Code Chapter 1305 and department rules.

(3) Closed formulary--All available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but excludes:

(A) drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers’ Comp (ODG) / Appendix A, ODG Workers’ Compensation Drug Formulary, and any updates;

(B) any prescription drug created through compounding prescribed before July 1, 2018 [compound] that contains a drug identified with a status of "N" in the current edition of the ODG Treatment in Workers’ Comp (ODG) / Appendix A, ODG Workers’ Compensation Drug Formulary, and any updates; [and]

(C) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and

(D) [locale] any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(4) Compounding--As defined under Occupations Code §551.003(9), the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner’s prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner’s initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or

(D) for or as an incident to research, teaching, or chemical analysis and not for selling or dispensing, except as allowed under Occupations Code §562.154 or Occupations Code Chapter 563.

(5) Generic--See generically equivalent in definition of paragraph (6) of this section.

(6) Generically equivalent--As defined under Occupations Code §562.001, a drug that, when compared to the prescribed drug, is:

(A) pharmaceutically equivalent--Drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendia or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium; and

(B) therapeutically equivalent--Pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

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

(A) placing the patient’s health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

(8) Nonprescription drug or over-the-counter medication--A non-narcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.

(9) Open formulary--Includes all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but does not include drugs that lack FDA approval, or non-drug items.
(10) Prescribing doctor--A physician or dentist who prescribes prescription drugs or over the counter medications in accordance with the physician's or dentist's license and state and federal laws and rules. For purposes of this chapter, prescribing doctor includes an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders, under Occupations Code Chapter 157, who prescribes prescription drugs or over the counter medication under the physician's supervision and in accordance with the health care practitioner's license and state and federal laws and rules.

(11) Prescription--An order for a prescription or nonprescription drug to be dispensed.

(12) Prescription drug--

(A) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription;" "Rx only;" or another legend that complies with federal law; or

(C) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.

(13) Statement of medical necessity--A written statement from the prescribing doctor to establish the need for treatments or services, or prescriptions, including the need for a brand name drug where applicable. A statement of medical necessity shall include:

(A) the injured employee's full name;

(B) date of injury;

(C) social security number;

(D) diagnosis code(s);

(E) whether the drug has previously been prescribed and dispensed, if known, and whether the inability to obtain the drug poses an unreasonable risk of a medical emergency; and

(F) how the prescription treats the diagnosis, promotes recovery, or enhances the ability of the injured employee to return to or retain employment.

(14) Substitution--As defined under Occupations Code §551.003(41), the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.

§134.530. Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks.

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims not subject to a certified network on or after September 1, 2011 when the date of injury occurred on or after September 1, 2011.

(b) Preauthorization for claims subject to the Division's closed formulary.

(1) Preauthorization is only required for:

(A) drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;

(B) any prescription drug created through compounding prescribed before July 1, 2018 [compound] that contains a drug identified with a status of "N" in the current edition of the ODG Treat-

(C) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and

(D) [has] any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(2) When §134.600(p)(12) of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) conflicts with this section, this section prevails.

(e) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization in accordance with §134.600 of this title and the preauthorization request must include the prescribing doctor's drug regimen plan of care, and the anticipated dosage or range of dosages for the administration of pain medication.

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regimen proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regimen previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(d) Treatment guidelines. Except as provided by this subsection, the prescribing of drugs shall be in accordance with §137.100 of this title (relating to Treatment Guidelines), the division's adopted treatment guidelines.

(1) Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(2) Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(3) Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier in accordance with subsection (g) of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) For situations in which the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other requestor, or injured employee must request approval of the drug by requesting preauthorization, including reconsideration, in accordance with §134.600 of this title and applicable provisions of Chapter 19 of this title (relating to Agents' Licensing).
(2) If preauthorization is being requested by an injured employee or a requestor other than the prescribing doctor, and the injured employee or other requestor requests a statement of medical necessity, the prescribing doctor shall provide a statement of medical necessity to facilitate the preauthorization submission as set forth in §134.502 of this title (relating to Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the requestor may submit a request for medical dispute resolution in accordance with §133.308 of this title (relating to MDR by Independent Review Organizations).

(4) In the event of an unreasonable risk of a medical emergency, an interlocutory order may be obtained in accordance with §133.306 of this title (relating to Interlocutory Orders for Medical Benefits) or §134.550 of this title (relating to Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary which are prescribed for initial pharmaceutical coverage, in accordance with Labor Code §413.0141, may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary which are prescribed for initial pharmaceutical coverage, in accordance with Labor Code §413.0141, may be dispensed without preauthorization, except as referenced in subsection (f)(1)(C) of this section, and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity in accordance with §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill) and §133.240 of this title (relating to Medical Payments and Denials), and applicable provisions of Chapter 19 of this title.

(1) Health care, including a prescription for a drug, provided in accordance with §137.100 of this title is presumed reasonable as specified in Labor Code §413.017, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(2) In order for an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that are recommended by the division's adopted treatment guidelines, §137.100 of this title, the denial must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established under Labor Code §413.017.

(3) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by §137.100 of this title, is required to provide documentation upon request in accordance with §134.500(13) of this title (relating to Definitions) and §134.502(e) and (f) of this title.

§134.540. Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks.

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims subject to a certified network on or after September 1, 2011 when the date of injury occurred on or after September 1, 2011.

(b) Preauthorization for claims subject to the Division's closed formulary. Preauthorization is only required for:

(1) drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;

(2) any prescription drug created through compounding prescribed before July 1, 2018 [compound] that contains a drug identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates; [aud]

(3) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and

(4) [D] any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(c) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization in accordance with the certified network's treatment guidelines and preauthorization requirements pursuant to Insurance Code Chapter 1305 and Chapter 10 of this title (relating to Workers' Compensation Health Care Networks).

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regime proposed by the prescribing doctor differs from the medications dosage or range of dosages, or drug regime previously preauthorized by that prescribing doctor; or

(B) there is a change prescribing doctor.

(d) Treatment guidelines. The prescribing of drugs shall be in accordance with the certified network's treatment guidelines and preauthorization requirements pursuant to Insurance Code Chapter 1305 and Chapter 10 of this title. Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier in accordance with subsection (f) of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) For situations in which the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other requestor, or injured employee must request approval of the drug in a specific instance by requesting preauthorization in accordance with the certified network's preauthorization process established pursuant to Chapter 10, Subchapter F of this title (relating to Utilization Review and Retrospective Review) and applicable provisions of Chapter 19 of this title (relating to Agents' Licensing).

(2) If preauthorization is pursued by an injured employee or requestor other than the prescribing doctor, and the injured employee or other requestor requests a statement of medical necessity, the prescribing doctor shall provide a statement of medical necessity to facilitate the preauthorization submission as set forth in §134.502 of this title (relating to Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the requestor may submit a request for medical
dispute resolution in accordance with §133.308 of this title (relating to MDR by Independent Review Organizations).

(4) In the event of an unreasonable risk of a medical emergency, an interlocutory order may be obtained in accordance with §133.306 of this title (relating to Interlocutory Orders for Medical Benefits) or §134.550 of this title (relating to Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary which are prescribed for initial pharmaceutical coverage, in accordance with Labor Code §413.0141, may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary which are prescribed for initial pharmaceutical coverage, in accordance with Labor Code §413.0141, may be dispensed without preauthorization and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity in accordance with §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill), §133.240 of this title (relating to Medical Payments and Denials), the Insurance Code, Chapter 1305, applicable provisions of Chapters 10 and 19 of this title.

(1) In order for an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that fall within the treatment parameters of the certified network's treatment guidelines, the denial must be supported by documentation of evidence-based medicine that outweighs the evidence-based of the certified network's treatment guidelines.

(2) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by the certified network's treatment guidelines, is required to provide documentation upon request in accordance with §133.500(13) of this title (relating to Definitions) and §134.502(e) and (f) of this title.

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

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Texas Department of Insurance, Division of Workers' Compensation
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TITLE 34. PUBLIC FINANCE
PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS
CHAPTER 71. CREDITABLE SERVICE
34 TAC §§71.14, 71.29, 71.31
The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 71, concerning Creditable Service, by amending §71.14 (Pay-
of benefits payable to members and retirees of the retirement plans.

Comments on the proposed amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is February 19, 2018.

The amendments are proposed under the Texas Government Code §§815.102, 815.105, 835.002, 840.002, and 840.005, which provide authority for the ERS Board of Trustees to adopt mortality, service and other tables necessary for the retirement system and to adopt rules for the retirement system.

No other statutes are affected by the proposed amendments.

§71.14. Payments to Establish or Reestablish Service Credit.

(a) A member or contributing member may purchase eligible service creditable in the retirement system in accordance with the Government Code, Chapter 813. The retirement system shall grant the applicable amount of service credit after each payment made under this section is equal to the amount required to establish one or more months of creditable service.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established.

(c) A contributing member of the Employees Retirement System of Texas (ERS) may file with the member's state employer, a contract to establish or reestablish service credit through a monthly payroll deduction installment plan. The state agency shall provide the ERS a signed copy of the contract not later than the date the service purchase contribution is reported to the ERS. Members with payroll deductions that will result in less than the amount required to establish one month of creditable service by fiscal year end will be provided written notice at the time the contract is received by the ERS, that a balloon payment will be due at fiscal year end; otherwise additional interest will accrue on the service cost.

(d) The contributing member shall designate the amount to be deducted from the member's salary and deposited each month with the ERS. The total amount deducted in any one fiscal year must equal or exceed the cost to establish one month of service credit. Excess payments of $5.00 or greater will be applied to the next fiscal year service purchase contract, if eligible. In the event the member does not negotiate a new contract within 60 days of a new fiscal year or there is no remaining service for purchase, any overpayment of $5.00 or greater will be refunded to the member. Any remaining credit of less than $5.00 will be deposited as interest toward the last purchase period established and will not be subject to refund.

(e) A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(f) The ERS shall develop procedures and forms to be used in connection with this section.

(g) A member who has contributed to both the Law Enforcement and Custodial Officer Supplemental Retirement (LECONS) fund and the ERS defined benefit plan will be allowed to purchase previously refunded Commissioned Peace Officer and Custodial Officer (CPO/CO) service and/or employee class service within the defined benefit plan. If a member purchases employee class service only and decides later to retire as a CPO/CO, the member must purchase the unpaid portion of service credit attributable to CPO/CO service, which will include any additional contribution to the LECOS fund plus interest, in order to receive creditable service and retire as a CPO/CO. If the member does not purchase the unpaid portion of the service credit attributable to CPO/CO service, then the service shall only be creditable for the employee class of membership.

§71.29. Purchase of Additional Service Credit.

(a) An eligible member may establish equivalent membership service credit authorized by §§813.513, Texas Government Code, as provided in this section. The provisions of §71.14 of this title (relating to Payments to Establish or Reestablish Service Credit) do not apply to credit established under this section.

(b) A member is eligible to establish credit under this section in the membership class in which the member holds a position if the member:

(1) has 120 months of service credit for one or more periods of time during which the member held a position in a membership class and the required contributions were made;

(2) is actively contributing to the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the actuaries and adopted by the board shall be used by the system to determine the actuarial present value. The additional service credit tables are adopted by reference and made a part of this rule for all purposes. The 2009 additional service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 additional service credit tables apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this title (relating to Determination of Date of Hire for Retirement Benefit Eligibility). The 2010 additional service credit tables apply to service purchase calculations performed on or after September 1, 2010, and are those tables adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 additional service credit tables apply to service purchase calculations performed on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207. The actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.
(d) Credit shall be established in increments of 12 months of credit, except that a member who may become eligible to retire by establishing fewer than 12 months of credit may establish the minimum number of months of credit necessary for the member to meet retirement eligibility.

(e) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that the member had on the date of the deposit required by subsection (c) of this section. This subsection does not apply to service credit transferred as authorized by Chapter 805, Texas Government Code.

(f) Credit established under this section may not be used to determine average monthly compensation for the purpose of computing an annuity.

(g) A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit as provided in this section.

(h) The provisions of §813.503, Texas Government Code, do not apply to credit established under this section.

(i) For a member establishing equivalent membership service credit authorized by §813.513, Texas Government Code, on or after September 1, 2018, the tables used to determine the actuarial present value of the service credit are those adopted by the board, and as adjusted from time to time as required by §815.105, Texas Government Code, in effect on the date the service credit is established. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

§71.31 Credit Purchase Option for Certain Waiting Period Service

(a) An eligible employee class member may establish service credit for service performed during the waiting period as authorized by §813.514, Texas Government Code, and as provided in this section. The provisions of §71.14 of this title (relating to Payments to Establish or Reestablish Service Credit) do not apply to service credit established under this section.

(b) An employee class member is eligible to establish service credit under this section if the member:

(1) has completed the waiting period;

(2) has made a retirement contribution in accordance with §813.201, Texas Government Code; and

(3) makes application for the establishment of service credit and payment of the required contributions in accordance with procedures developed by ERS.

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the service credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used to determine the actuarial present value. The waiting period service credit tables are adopted by reference and made a part of this rule for all purposes. The 2009 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 waiting period service credit tables apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this title (relating to Determination of Date of Hire for Retirement Benefit Eligibility). The 2010 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2010, and are those tables adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

(d) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing service credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the system's actuary and adopted by the board.

(e) Waiting period service credit shall be established in increments of one month.

(f) This section does not apply to service credit transferred as authorized by Texas Government Code, Chapter 805.

(g) A member who withdraws contributions and cancels service credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit only as provided by this section.

(h) Credit established under this section may not be used to determine average monthly compensation for the purpose of computing an annuity.

(i) For a member establishing service credit for service performed during the waiting period as authorized by §813.514, Texas Government Code, on or after September 1, 2018, the tables used to determine the actuarial present value of the service credit are those adopted by the board, and as adjusted from time to time as required by §815.105, Texas Government Code, in effect on the date the service credit is established. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

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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Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas

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For further information, please call: (877) 275-4377

CHAPTER 73. BENEFITS

34 TAC §73.21
The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 73, concerning Benefits, by amending §73.21 (Reduction Factor for Age and Retirement Option).

Effective September 1, 2017, Chapter 530 (S.B. 301), Acts of the 85th Legislature, Regular Session, 2017, amended §815.105, Texas Government Code, to require the ERS Board of Trustees to adopt new actuarial factor tables at least once every four years. This change in law was a recommendation from the Texas Sunset Advisory Commission following the Sunset review of ERS. On August 23, 2017, the ERS Board of Trustees (Board) adopted a new set of actuarial assumptions, which serve as the basis for new actuarial factor tables effective September 1, 2018.

Section 73.21 (Reduction Factor for Age and Retirement Option) is proposed to be amended to add language that actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits will be subject to the factor tables, as adjusted from time to time, adopted under §815.105, Texas Government Code. Section 73.21 is also amended to include the current street address of ERS.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that for the first five years the amended rule is in effect:

(1) the proposed rules will not create or eliminate a government program;
(2) implementation of the rules will not require the creation or elimination of employee positions;
(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid to the agency;
(5) the rules will not create a new rule;
(6) the rules do not expand, limit, or repeal an existing rule; and
(7) the rules will not increase or decrease the number of individuals subject to the rules.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule. Ms. Hardaway has also determined that, to her knowledge, the anticipated economic costs to persons who are required to comply with the rule as proposed include the potential change in the cost of service purchases by ERS members, as well as changes in reduction factors, due to the adoption of updated actuarial assumptions used for calculation of benefits. And, to her knowledge, small businesses or rural communities should not be affected by the rule.

Ms. Hardaway has also 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 would be to use the most up-to-date actuarial assumptions in order to accurately determine the cost of benefits payable to members and retirees of the retirement plans.

Comments on the proposed amendment may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is February 19, 2018.

The amendment is proposed under the Texas Government Code, §815.102 and §815.105 which provides authorization for the ERS Board of Trustees to adopt rules for the retirement system and to adopt mortality, service and other tables necessary for the retirement system.

No other statutes are affected by the proposed amendment. §73.21. Reduction Factor for Age and Retirement Option

(a) Actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits first payable on or after September 1, 2018 are those adopted by the board, as adjusted from time to time as required by §815.105, Texas Government Code, and apply to forms and effective dates of annuities specified by the board. Such assumptions, tables, and factors are incorporated in this rule by reference and are a part of this rule for all purposes. Copies of the tables are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

(b) The 1999 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 1999 and prior to September 30, 2009, and are those factors adopted by the board December 8, 1999, based on assumptions adopted by the board December 9, 1998. The factors apply to annuities first payable January 1, 2000 through August 31, 2009. The 2009 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2009 reduction factors apply to retirements effective on or after September 30, 2009, and before September 1, 2014. The 2014 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and further based on legislative changes to the retirement plan effective September 1, 2013. For retirements prior to September 1, 2014, the previously adopted factors apply.

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. The 2009 reduction factors for early retirement or death apply to retirements effective on or after September 30, 2009, and apply to deaths first reported to ERS on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for early retirement or death apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this chapter (relating to Determination of Date of Hire for Retirement Benefit Eligibility). The 2010 reduction factors apply to retirements effective on or after September 30, 2010, and apply to deaths first reported to ERS on or after September 1, 2010, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for early retirement or death apply to retirements effective on or after September 1, 2014, but before September 1, 2018, and deaths first reported to ERS on or after September 1, 2014, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For retirements prior to September 1, 2014 and deaths first reported to ERS prior to September 1, 2014, the previously adopted factors apply.
(d) The 2000 reduction factors for the partial lump sum option apply to retirements effective on or after January 1, 2000 through August 31, 2009, and are those factors adopted by the board December 8, 1999, based on assumptions adopted by the board December 9, 1998. The 2009 reduction factors for the partial lump sum option apply to retirements effective on or after September 30, 2009 and deaths first reported to ERS on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2014 reduction factors for partial lump sum option apply to a retirement effective on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For retirements occurring prior to September 1, 2014 and deaths first reported to ERS prior to September 1, 2014, the previously adopted factors apply.

(e) The 2005 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement application received by the System on or after September 1, 2005, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003. The 2009 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement based on the effective date of a retirement that is effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for a standard nonoccupational disability retirement annuity apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this chapter. The 2010 reduction factors apply to a disability retirement based on the effective date of a retirement that is effective on or after September 30, 2010, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement based on the effective date of a retirement that is on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For disability retirements based on an effective date of retirement that is effective prior to September 1, 2014, the previously adopted factors apply.

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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Employees Retirement System of Texas
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CHAPTER 77. JUDICIAL RETIREMENT
34 TAC §§77.1, 77.11, 77.15, 77.21
The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 77 by amending §77.1 (Reduction Factors for Death before Age 65), §77.11 (Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I)) and Judicial Retirement System of Texas Plan Two (JRS-II)), §77.15 (Payments To Establish or Reestablish Service Credit), and §77.21 (Purchase of Additional Service Credit).

Effective September 1, 2017, Chapter 530 (S.B. 301), Acts of the 85th Legislature, Regular Session, 2017, amended §815.105 and §840.005, Texas Government Code, to require the ERS Board of Trustees to adopt new actuarial factor tables at least once every four years. This change in law was a recommendation from the Texas Sunset Advisory Commission following the Sunset review of ERS. On August 23, 2017, the ERS Board of Trustees (Board) adopted a new set of actuarial assumptions, which serve as the basis for new actuarial factor tables effective September 1, 2018.

Sections 77.1, 77.11, and 77.21 are also amended to update the address provided for ERS to include the current street address.

Section 77.11 and §77.21 are proposed to be amended to add language that reductions and service purchases will be subject to the factor tables, as adjusted from time to time, adopted under §815.105 and §840.005, Texas Government Code.

Additionally, §77.15 is proposed to be amended to repeal subsections (c), (d), and (e) regarding purchasing service through payroll deduction, which are obsolete since that is no longer permitted by the retirement system.

GOVERNMENT GROWTH IMPACT STATEMENT
ERS has determined that for the first five years the amended rule is in effect:
(1) the proposed rules will not create or eliminate a government program;
(2) implementation of the rules will not require the creation or elimination of employee positions;
(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid to the agency;
(5) the rules will not create a new rule;
(6) the rules do not expand or limit an existing rule, but do partially repeal three subsections that are obsolete; and
(7) the rules will not increase or decrease the number of individuals subject to the rules.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule. Ms. Hardaway has also determined, that to her knowledge, the anticipated economic costs to persons who are required to comply with the rules as proposed include the potential change in the cost of service purchases by ERS members, as well as changes in reduction factors, due to the adoption of updated actuarial assumptions used for calculation of benefits. And, to her knowledge, small businesses or rural communities should not be affected by the rules.

Ms. Hardaway also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to use the most up-to-date actuarial assumptions in order to accurately determine the cost.
of benefits payable to members and retirees of the retirement plans.

Comments on the proposed amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is February 19, 2018.

The amendments are proposed under the Texas Government Code §§835.002, 840.002, and 840.005, which provide authorization for the ERS Board of Trustees to adopt mortality, service and other tables and factors necessary for the retirement system and to adopt rules for the retirement system.

No other statutes are affected by the proposed amendments.

§77.1. Reduction Factors for Death before Age 65.

If a member of the Judicial Retirement System of Texas Plan One who is eligible to select a death benefit plan dies prior to age 65, the annuity will be reduced by the factors developed by the actuaries. Those factors are adopted by reference and are made a part of this section for all purposes. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets]; P.O. Box 13207, Austin, Texas 78771-3207. The reduction factors that apply to deaths of members prior to age 65 and that occur on or after September 1, 2009, are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For deaths occurring prior to September 1, 2009, the previously adopted factors apply.

§77.11. Reduction Factors for Age and Retirement Options—Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II).

(a) Tables for calculation of optional factors.

(1) The 1981 reduction factors for optional forms of retirement annuities are independent of the gender of the member and of the beneficiary and are based on the GA-51 male mortality table projected with Scale C to 1970 with an age set forward of one year for retiring members and an age set back of four years for beneficiaries. The interest assumption is 5.0%.

(2) The 1992 reduction factors for optional forms of retirement annuities are independent of the gender of the member and the beneficiary and are based on the 1983 group annuity mortality table. The interest rate assumption is 8.5%.

(3) The reduction factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008, for optional forms of retirement annuities are independent of the gender of the member and the beneficiary and apply to retirements effective on or after September 1, 2009. For retirements effective prior to September 1, 2009, the previously adopted factors apply.

(4) The reduction factors adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013, are independent of the gender of the member and the beneficiary and apply to retirements effective on or after September 1, 2014, but before September 1, 2018. For retirements effective prior to September 1, 2014, the previously adopted factors apply.

(5) Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets], P.O. Box 13207, Austin, Texas 78771-3207. The option tables, along with the adjustments described in this subsection are adopted by reference and made a part of this rule for all purposes.

(b) Option factors. The 2009 reduction factors for optional annuities for service retirement, disability retirement, and death benefit plans under the JRS-I and JRS-II plans apply to retirements effective on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements first effective prior to September 1, 2009, the previously adopted factors apply. The 2014 reduction factors for optional annuities for service retirement, disability retirement, and death benefit plans under the JRS-I and JRS-II plans apply to retirements effective on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For retirements first effective prior to September 1, 2014, the previously adopted factors apply. All option factors have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. The reduction factors are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets], P.O. Box 13207, Austin, Texas 78771-3207.

(c) Formula for JRS-II reduction factors for death before age 65.

(1) A death benefit annuity of the Judicial Retirement System of Texas Plan Two on behalf of a member dying before age 65 while not eligible for an unreduced service retirement benefit is reduced for each whole or partial calendar month that occurs during the period from the date of death to the 65th birthday, including the months that contain the dates of death and birthday. For the first 120 months (ages 55-64), the annuity is reduced by one-third of 1.0% per month. For the next 60 months (ages 50-54), the annuity is reduced by one-fourth of 1.0% per month. For the next 60 months (ages 45-49), the annuity is reduced by one-sixth of 1.0% per month. For the next 120 months (ages 35-44), the annuity is reduced by one-twelfth of 1.0% per month.

(2) A death benefit annuity on behalf of a member dying before age 65 while eligible for an unreduced service retirement benefit shall not be reduced for age.

(3) JRS-II reduction factors for death before age 65 have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. The reduction factors that apply to deaths of members prior to age 65 and that occur on or after September 1, 2009, are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For deaths occurring prior to September 1, 2009, the previously adopted factors apply. The reduction factors that apply to deaths of members prior to age 65 and that occur on or after September 1, 2014, but before September 1, 2018, are those factors adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For deaths occurring prior to September 1, 2014, the previously adopted factors apply. The set of reduction factors is available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets], P.O. Box 13207, Austin, Texas 78771-3207.

(d) Reserve factors. The reserve factors for JRS-II are adopted by reference and made a part of this rule for all purposes. The reserve factors apply to periods beginning on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For periods occurring prior to September 1, 2009, the previously adopted factors
apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets], P.O. Box 13207, Austin, Texas 78711-3207.

(e) Dollar limitations for maximum annual benefit. Service retirement annuities shall conform to dollar limitations and applicable adjustments under the Internal Revenue Code of 1986, §415 (26 United States Code §415) as determined by the federal commissioner of internal revenue.

(f) For a member subject to a reduction factor under this section on or after September 1, 2018, the factors are those adopted by the board, and as adjusted from time to time as required by §815.105 and §840.005, Texas Government Code, in effect on the date the reduction factor occurs. Copies of these factors are available from the System’s executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

§77.15. Payments To Establish or Reestablish Service Credit.

(a) A member or contributing member of the Judicial Retirement System of Texas Plan One or Plan Two may purchase eligible service creditable in the member’s respective retirement system in accordance with the Government Code, Chapter 833 and Chapter 838, respectively. Subject to §77.23, the retirement system shall grant the applicable amount of service credit after each payment made under this section is equal to the amount required to establish one or more months of creditable service.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established, and calendar year service credit.

[ce] A contributing member of the Judicial Retirement System of Texas Plan One or Plan Two may file with the member’s state payroll officer, a contract to establish or reestablish service credit through a monthly payroll deduction installment plan. The state agency shall provide the Employees Retirement System of Texas (ERS) a signed copy of the contract not later than the date the service purchase contribution is reported to the ERS. Plan Two members with payroll deductions that will result in less than the amount required to establish one month of creditable service by fiscal year end will be provided written notice at the time the contract is received by the ERS; that a balloon payment will be due at fiscal year end; otherwise additional penalty interest will accrue on the service cost.

[cd] The contributing member shall designate the amount to be deducted from the member’s salary and deposited each month with the ERS. The total amount deducted in any one fiscal year must equal or exceed the cost to establish one month of service credit. Excess payments of $5.00 or greater will be applied to the next fiscal year service purchase contract, if eligible. In the event the member does not negotiate a new contract within 60 days of a new fiscal year or there is no remaining service for purchase, any overpayment of $5.00 or greater will be refunded to the member. Any remaining credit of less than $5.00 for Plan One members will be deposited to the retirement system’s state accumulation account and will not be subject to refund. Any remaining credit of less than $5.00 for Plan Two members will be deposited as penalty interest toward the last contract established and will not be subject to refund.

[ce] A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(c) [44] The ERS shall develop procedures and forms to be used in connection with this section.

§77.21. Purchase of Additional Service Credit.

(a) The provisions of this section apply only to the Judicial Retirement System of Texas Plan Two (JRS-II).

(b) An eligible member may establish equivalent membership service credit authorized by §838.108, Texas Government Code, as provided in this section. The provisions of §77.15 of this title (relating to Payments to Establish or Reestablish Service Credit) do not apply to service credit established under this section.

(c) A member is eligible to establish service credit under this section in the membership class in which the member holds a position if the member:

(1) has 180 months of service credit for one or more periods of time during which the member held a position as a judge and the required contributions were made;

(2) is a member of the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(d) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the system’s actuary and adopted by the board shall be used by the system to determine the actuarial present value. The 2009 additional service credit tables for JRS-II are adopted by reference and made a part of this rule for all purposes. The additional service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2014 additional service credit tables apply to service purchase calculations performed on or after September 1, 2014, but before September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street [18th and Brazos Streets], P.O. Box 13207, Austin, Texas 78711-3207.

(e) Actuarial present value shall be based on:

(1) the member’s age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(f) Credit shall be established in whole year increments of credit.

(g) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that the member had on the date of the deposit required by subsection (d) of this section.
§838.102, provided credit established
For justed
81, amendments
43 TexReg §81.8
Procedures).
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to
rules.
Ms. Robin Hardaway, Director of Customer Benefits, has
determined that for the first five year period the rules are in effect,
there will be no fiscal impact for state or local government
as a result of enforcing or administering the rules. To Ms.
Hardaway's knowledge, there are no known anticipated economic ef-
tects to persons who are required to comply with the rules as
proposed, and small businesses or rural communities should not
be affected.
Ms. Hardaway also determined that for each year of the first
five years the rules are in effect the public benefit anticipated
as a result of enforcing the rules would be to provide the most
accurate salary basis for life insurance and disability benefits for
elected and appointed officials and members of the Legislature.
In addition, the rule is expanded to provide members with an
additional choice, the State of Texas Vision Plan, to apply an
incentive credit for a reduction in cost of certain GBP benefit
plans when health insurance is waived.
Comments on the proposed rule amendments may be submit-
ted to Paula A. Jones, Deputy Executive Director and General
Counsel, Employees Retirement System of Texas, P.O. Box
13207, Austin, Texas 78711-3207, or you may email Ms. Jones
at paula.jones@ers.texas.gov. The deadline for receiving com-
ments is February 19, 2018, at 10:00 a.m.
The amendments are proposed under the Texas Insurance
Code, §1551.052 which provides authorization for the ERS
Board of Trustees to adopt rules necessary to carry out its
statutory duties and responsibilities.
No other statutes are affected by the proposed amendments.
§81.1. Definitions.
The following words and terms, when used in this chapter, shall have
the following meanings, unless the context clearly indicates otherwise.
(1) Accelerated life benefit--A term life insurance benefit
to be paid in advance of the death of an insured member or dependent,
as requested by the insured member and approved by the carrier or ad-
ministering firm, in accordance with the terms of the group term life
insurance plan as permitted by §1551.254 of the Act. An accelerated
life benefit payment may be requested only if the insured person is di-
agnosed with a terminal condition and only once during the lifetime
of the insured person. For purposes of this definition, a terminal con-
dition is an incurable health condition that the administering firm or
carrier determines with reasonable medical certainty will result in the
death of the insured within 12 months.
(2) Act--The Texas Employees Group Benefits Act, Insur-
ance Code, Chapter 1551, as amended.
(3) Active duty--An employee's expenditure of time and
energy in the service of his/her employer, including elected officials
of the state of Texas who are eligible for coverage under the Act. An
employee is on active duty on each day of a regular paid vacation or
regular paid sick leave or on a non-working day, if the employee was
on active duty on the last preceding workday.

CHAPTER 81. INSURANCE
34 TAC §§81.1, 81.8, 81.9
The Employees Retirement System of Texas (ERS) proposes
amendments to 34 Texas Administrative Code (TAC) Chapter
81, concerning Insurance, by amending §81.1 (Definitions),
§81.8 (Waiver of Health Coverage) and §81.9 (Grievance
Procedures).
Section 81.1, concerning Definitions, is amended to clarify the
amount of compensation used for non-salaried elected and ap-
pointed officials and members of the Legislature for purposes of
determining optional term life insurance and disability income
limitations.
Section 81.8, concerning Waiver of Health Coverage, is
amended to allow a member receiving an incentive credit to
apply that credit toward the recently established State of Texas
Vision plan within the Group Benefits Program (GBP).
Section 81.9, concerning Grievance Procedures, is amended to
reflect that the State of Texas Vision plan is a self-funded plan,
and clarifies that the vision plan's grievance procedures are set
forth in the Master Benefit Plan Document for that plan and are
subject to applicable federal statutes and rules and §1551.356
of the Texas Employees Group Benefits Act, Insurance Code.

GOVERNMENT GROWTH IMPACT STATEMENT
ERS has determined that during the first five years the amended
rules will be in effect:
(1) the proposed rules will not create or eliminate a government
program;
(2) implementation of the rules will not require the creation or
elimination of employee positions;
(3) implementation of the rules will not require an increase or
decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid
to the agency;
(5) the rules will not create a new rule;
(6) the rules expand an existing rule; and
(7) the rules will not increase or decrease the number of individ-
uals subject to the rules.
Ms. Robin Hardaway, Director of Customer Benefits, has
determined that for the first five year period the rules are in effect,
there will be no fiscal impact for state or local government
as a result of enforcing or administering the rules. To Ms.
Hardaway's knowledge, there are no known anticipated economic ef-
tects to persons who are required to comply with the rules as
proposed, and small businesses or rural communities should not
be affected.
Ms. Hardaway also determined that for each year of the first
five years the rules are in effect the public benefit anticipated
as a result of enforcing the rules would be to provide the most
accurate salary basis for life insurance and disability benefits for
elected and appointed officials and members of the Legislature.
In addition, the rule is expanded to provide members with an
additional choice, the State of Texas Vision Plan, to apply an
incentive credit for a reduction in cost of certain GBP benefit
plans when health insurance is waived.
Comments on the proposed rule amendments may be submit-
ted to Paula A. Jones, Deputy Executive Director and General
Counsel, Employees Retirement System of Texas, P.O. Box
13207, Austin, Texas 78711-3207, or you may email Ms. Jones
at paula.jones@ers.texas.gov. The deadline for receiving com-
ments is February 19, 2018, at 10:00 a.m.
The amendments are proposed under the Texas Insurance
Code, §1551.052 which provides authorization for the ERS
Board of Trustees to adopt rules necessary to carry out its
statutory duties and responsibilities.
No other statutes are affected by the proposed amendments.
§81.1. Definitions.
The following words and terms, when used in this chapter, shall have
the following meanings, unless the context clearly indicates otherwise.
(1) Accelerated life benefit--A term life insurance benefit
to be paid in advance of the death of an insured member or dependent,
as requested by the insured member and approved by the carrier or ad-
ministering firm, in accordance with the terms of the group term life
insurance plan as permitted by §1551.254 of the Act. An accelerated
life benefit payment may be requested only if the insured person is di-
agnosed with a terminal condition and only once during the lifetime
of the insured person. For purposes of this definition, a terminal con-
dition is an incurable health condition that the administering firm or
carrier determines with reasonable medical certainty will result in the
death of the insured within 12 months.
(2) Act--The Texas Employees Group Benefits Act, Insur-
ance Code, Chapter 1551, as amended.
(3) Active duty--An employee's expenditure of time and
energy in the service of his/her employer, including elected officials
of the state of Texas who are eligible for coverage under the Act. An
employee is on active duty on each day of a regular paid vacation or
regular paid sick leave or on a non-working day, if the employee was
on active duty on the last preceding workday.

43 TexReg 334   January 19, 2018   Texas Register
§1551.102. ERS--Employees Retirement System of Texas.

(4) AD&D--Voluntary accidental death and dismemberment coverage.

(5) Age of employee--The age to be used for determining optional term life and AD&D insurance required contributions. For these purposes, the age of the employee is the employee's attained age on September 1.

(6) Annuitant--A retired person who is eligible under §1551.102 of the Act to participate in the GBP and meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(7) Basic plan--The plan of group insurance, including prescription drug coverage, determined by the Board of Trustees, currently HealthSelect or HealthSelect Medicare Advantage participant-only, as applicable, and basic term life insurance coverage, in which every eligible full-time employee and annuitant, is automatically enrolled after meeting any applicable waiting period or unless participation is expressly waived.

(8) Benefits Coordinator--A person employed by an employer to provide assistance to its employees and their dependents with all aspects of GBP participation. The benefits coordinator for all other GBP participants is ERS.

(9) Board of Trustees or Board--The Board of Trustees of the Employees Retirement System of Texas.

(10) CHIP--Children's Health Insurance Program.

(11) CMS--Centers for Medicare and Medicaid Services or its successor agency.


(13) Consumer Directed HealthSelectSM--The self-funded high deductible health benefit plan offered through the GBP and administered by the Employees Retirement System of Texas and qualified carriers or administering firms.

(14) Dependent--With respect to an eligible member, means the member's:

(A) spouse, as recognized by applicable law, which includes only a married spouse as evidenced by a properly issued and completed marriage license or an informally married spouse whose marriage is memorialized by a Declaration of Informal Marriage and filed of record with an appropriate governmental authority. Absent clear and compelling evidence of an informal marriage existing at the time of enrollment and deemed sufficient by ERS, it is a plan design requirement that the licensed marriage or Declaration of Informal Marriage must occur, or be filed, as applicable, prior to the effective date of the dependent spouse's enrollment in the GBP;

(B) child under 26 years of age;

(C) child age 26 and older whom the Board of Trustees or its designee determines is certified by an approved practitioner to be mentally or physically incapacitated from gainful employment, and earns less than the monthly wage standard for enrolling in CHIP in Texas for a family of one at the time of application or reevaluation. If the child earns more than this wage standard for a period of six months or longer in any calendar year, then the child must demonstrate to ERS his/her continued eligibility for dependent coverage by proving he/she is dependent on the member for care or support and either lives with the member or has care provided by the member on a regular basis; and

(D) child under age 26 who is the member's ward, as that term is defined by §1002.030, Texas Estates Code.

(E) In this section, "child" includes:

(i) a natural child, adopted child, stepchild, foster child; or a child in the possession of a participant who is designated as managing conservator of the child under an irrevocable or unrevoked affidavit of relinquishment under Texas Family Code, Chapter 161; or

(ii) a child who is related to the member by blood or marriage and was claimed as the member's dependent on his/her federal income tax return for the tax year preceding the plan year in which the child is first enrolled as the member's dependent in the GBP, and for each subsequent year in which the child is enrolled as the member's dependent. The federal income tax return must have been filed when first due or before any timely extensions expired.

(F) The requirement in subparagraph (E)(ii) of this paragraph that a child must be claimed as the member's dependent on his/her federal income tax return preceding the child's enrollment does not apply if:

(i) the child is born in the year in which the child is first enrolled; or

(ii) the member can demonstrate good cause for not claiming the child as a dependent in the preceding tax year.

(15) Employee--A person eligible to participate in the GBP under §1551.101 of the Act, which includes an appointed or elected state officer, judicial officer, or employee in the service of the state of Texas. The term also includes an eligible employee of an institution of higher education and any persons required or permitted by the Act to enroll as members.

(16) Employer--State of Texas and its agencies, institutions of higher education, and other governmental or quasi-governmental employers within the state whose employees or annuitants are authorized by the Act to participate in the GBP.

(17) ERS--Employees Retirement System of Texas.

(18) Evidence of insurability--Evidence required by ERS, an administering firm, or a qualified carrier for approval of coverage or changes in coverage other than GBP health coverage pursuant to the enrollment and participation provisions in this chapter.

(19) Executive director--The executive director of the Employees Retirement System of Texas. All references to the executive director also include the person or position designated by the executive director or Board of Trustees to perform the relevant function of the executive director.

(20) Former COBRA unmarried child--A member's unmarried child who is at least 26 years of age, who had GBP coverage as a dependent until the child became ineligible, who had continuation coverage under COBRA until that coverage expired, and who reinstates GBP coverage pursuant to §1551.158 of the Act.

(21) GBP (Group Benefits Program)--The Texas Employees Group Benefits Program as established and administered by the Board of Trustees pursuant to the Act.

(22) GBP health coverage--Includes HealthSelectSM of Texas, Consumer Directed HealthSelectSM, HMOs and Medicare Advantage plans, as applicable.

(23) Health insurance waiting period--The applicable waiting period defined in §1551.1055 of the Act.

(24) HealthSelectSM of Texas--The self-funded health benefit plan offered in the GBP and administered by the Employees Retirement System of Texas and a qualified carrier or administering firm.
HealthSelect of Texas also includes a Prescription Drug Plan administered by a Pharmacy Benefit Manager approved by the Board.

(25) HealthSelect® Medicare Rx®--A plan, approved by the Board of Trustees, that provides prescription drug coverage designed for participants who are eligible for Medicare-primary coverage in the GBP as permitted by CMS.

(26) HMO--A health maintenance organization, as defined by §1551.007 of the Act, and approved by the Board of Trustees to provide health care coverage to eligible participants in the GBP.

(27) Insurance required contribution--Any out-of-pocket charge incurred by a member or by a member's dependent as payment for coverage provided under the GBP that exceeds the state's or employer's contributions made on behalf of the member.

(28) LWOP (Leave without pay)--The leave status of an employee who is certified by his/her employer to be absent from active duty for an entire calendar month, who does not receive any compensation for time absent from active duty, and who has not received a refund of retirement contributions based on the most recent term of employment.

(29) Medicare Advantage Plan--A plan, approved by the Board of Trustees, that provides health coverage for participants who are eligible for Medicare-primary coverage. The plan is administered as a Medicare Advantage Plan as permitted by CMS through:

(A) a health maintenance organization; or

(B) any other plan, organization, carrier or administering firm approved by the Board of Trustees to provide the coverage.

(30) Medicare-eligible--The status of a participant who is eligible for primary coverage under Medicare Part A and/or Part B. Eligibility may extend to a dependent that is qualified to receive Medicare benefits as his/her primary coverage as permitted by CMS.

(31) Member--For purposes of this chapter only regarding insurance plan participation in the GBP, a member is a participant who is an employee, retiree, or other person eligible to participate in the GBP as provided under the Act and who is not a dependent.

(32) Minimum retiree optional life--A standard $10,000 term life insurance policy whose insurance required contribution is set solely on the basis of the benefit rather than on the retiree's age. It is available for retirees at any time during their retirement. If a retiree does not have life insurance, the retiree may apply for this coverage with evidence of insurability. If the retiree has Election 1 or Election 2 optional life, the retiree may elect to reduce the life coverage to this coverage by requesting the change without an application or evidence of insurability.

(33) Optional Coverage--Coverage established by the Board of Trustees in the GBP and as set forth in §81.7(c)(1)(A) - (K).

(34) ORP--The Optional Retirement Program as provided in the Government Code, Chapter 830.

(35) Participant--An employee, annuitant, or dependent, as defined in the Act, a surviving spouse or child of a deceased member, or any other person eligible for coverage under the Act and enrolled in any coverage offered under the GBP.

(36) Placement for adoption--The legal status of a child under which a person assumes and retains the legal obligation for total or partial support of the child in anticipation of the person's adoption of such child.

(37) Preexisting condition--Any injury or medical condition for which a participant received medical treatment or services, or was prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(d) of this chapter must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(38) Premium conversion plan--A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the Board of Trustees and designed to provide premium conversion as described in §81.7(b) of this chapter.

(39) Retiree--An employee who retires or is retired and who:

(A) is authorized by the Act to participate in the GBP as an annuitant;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the GBP as an annuitant; and

(i) on August 31, 2001, was an eligible employee with an employer whose employees are authorized to participate in the GBP and, on the date of retirement has three years of service with such an employer;

(ii) on August 31, 2001, had three years of service as an eligible employee with an employer whose employees are authorized to participate in the GBP; or

(iii) is determined by ERS to be eligible as described by §1551.102 and §1551.114 of the Act.

(40) Salary--The amount of compensation, which includes the employee's regular salary, longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by an employee as of the employee's first day of active duty and as of September 1, for an existing or rehired employee. This amount is used for determining optional term life and disability income limitations. Non-salaried appointed officials, state-wide elected and appointed officials and members of the Legislature may use the salary of a state district judge or their actual salary as of September 1 of each year for determining their optional term life. For members of the Legislature, disability income limitations will be based on their actual monthly salary.

(41) TRS--The Teacher Retirement System of Texas.

§81.8. Waiver of Health Coverage.

(a) Eligibility for waiver. An eligible member may elect to waive GBP health coverage by the method and form specified by ERS:

(1) during the initial period of eligibility;

(2) after a qualifying life event; or

(3) during annual enrollment.

(b) Enrollment in GBP health coverage after waiver. An eligible member who previously waived GBP health coverage, may enroll in GBP health coverage subject to the provisions of §81.7 of this chapter (relating to Enrollment and Participation).

(c) Incentive Credit based on a waiver.

(1) An eligible member, except for a survivor under Chapter 615, Texas Government Code who waives GBP health coverage is
eligible for an incentive credit in lieu of the state contribution up to the amount specified in the General Appropriations Act if the member:

(A) would otherwise have been eligible for the state contribution to be made on his/her behalf; and

(B) demonstrates, in a manner specified by ERS, that the member has other health coverage substantially equivalent to the GBP health coverage.

(2) The incentive credit may be applied only toward the cost of certain dental plans, vision coverage or AD&D coverage offered within the GBP.

§81.9. Grievance Procedures.

(a) Grievance procedures regarding the denial of claims by administering firms for HealthSelect of Texas, Consumer Directed HealthSelect, State of Texas Vision and the Dental Choice Plans are set forth in the Master Benefit Plan Documents for those plans. Internal and external reviews of claims are subject to applicable federal statutes and rules and §1551.356, of the Act.

(b) The review procedures for a participant in an HMO, dental health maintenance organization[vision plan] or a Medicare Advantage Plan who is denied payment of insurance benefits, or otherwise receives an adverse decision, are set forth in the applicable plan documents. Those decisions are not appealable to ERS.

(c) Grievance procedures regarding the denial of a claim, denial of eligibility for coverage other than dependent eligibility, or other adverse decisions by a carrier or an administering firm for all GBP coverage other than those subject to subsections (a) and (b) are set forth in this subsection. A participant must request the carrier or administering firm to reconsider the denial or other adverse decision prior to seeking grievance review by ERS. Any additional documentation in support of the claim may be submitted to the carrier or administering firm with the request for reconsideration. If the claim is again denied, the claim, accompanied by all related documents and copies of correspondence with the carrier or administering firm, may be submitted to the participant to the executive director for review. A request for grievance review must be filed with ERS by the participant in writing within 90 days from the date the carrier or administering firm formally denies the claim, or provides notice of other adverse decision, and mails notice of the denial and grievance right of appeal to the participant.

(d) When the executive director reviews any matter arising under this section, information available to ERS will be considered. When the executive director completes the review and makes a determination, all parties involved will be notified in writing of the decision.

(e) To the extent allowed by statute, appeals of ERS' determination will be conducted under the provisions of Chapter 67 of this title (relating to Hearings on Disputed Claims) and the Act. A notice of appeal must be in writing and filed with ERS within 30 days from the date ERS' determination is served on the participant.

(f) Matters initiated or referred to ERS concerning misrepresentations or fraud are not subject to grievance procedures under this 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.

Filed with the Office of the Secretary of State on January 5, 2018.

TRD-201800035
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: February 18, 2018
For further information, please call: (877) 275-4377
ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.112, concerning Attendant Compensation Rate Enhancement; §355.456, concerning Reimbursement Methodology; §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers; and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs without changes to the proposed text as published in the November 10, 2017, issue of the Texas Register (42 TexReg 6259). Therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION

Effective March 1, 2018, HHSC will implement a cost report reform initiative for HCS/TxHmL and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) providers by requiring only even-year cost reports beginning with providers' 2018 fiscal year cost reports. These amendments are at §355.105(c) for ICF/IID providers and at §355.722(a) for HCS/TxHmL providers.

As part of this initiative, HHSC adopts amendments to §355.102(d) so that all providers attend state-sponsored cost report training every other year for the even-year cost report. Previously, providers attended cost report training for odd-year cost reports.

Section 355.112(h)(2)(B) is also amended to require Attendant Compensation Reports for odd years beginning with the rate year that starts September 1, 2017. The report must reflect the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year, and it is due no later than 90 days following the end of the provider entity’s fiscal year or 90 days from the transmittal date of the Attendant Compensation Report forms, whichever due date is later.

Finally, HHSC deleted the Total Medicaid Spending Requirement in the ICF/IID reimbursement methodology at §355.456(j)(8) and in the HCS/TxHmL reimbursement methodology at §355.723(f)(10) beginning September 1, 2017. Providers who chose to receive the Medicaid rates in effect on August 31, 2015, (i.e., providers who chose to "opt out" of the September 1, 2015, rate increases in order to be exempt from the Total Medicaid Spending Requirement) will receive the rates that were adopted effective September 1, 2015, effectively eliminating the rate differential between providers who "opted in" and providers who "opted out."

COMMENTS

The 30-day comment period ended December 10, 2017. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §§355.102, 355.105, 355.112

STATUTORY AUTHORITY

The amended 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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 January 8, 2018.
TRD-201800050
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 1, 2018
Proposal publication date: November 10, 2017
For further information, please call: (512) 462-6223

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.456

STATUTORY AUTHORITY
The amended rule 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 462-6223

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.722, §355.723

STATUTORY AUTHORITY

The amended 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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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Karen Ray
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Proposal publication date: November 10, 2017
For further information, please call: (512) 462-6223

TITLE 4. AGRICULTURE
PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Subchapter A, §12.1; new Subchapter A, §12.1, and the repeal of Subchapter B, §12.13, without changes to the proposal as published in the November 17, 2017, issue of the Texas Register (42 TexReg 6429). New Subchapter B, §12.13 and §12.15, and amendments to §12.11 are adopted with changes to the November 17, 2017 proposal. The adopted rules define procedures for device inspections and complaints.

The adoption of the new and amended rules were made in order to comply with House Bill 2174 (HB 2174), enacted during the 85th Regular Legislative Session, which amended Chapter 13, Texas Agriculture Code, related to Weights and Measures. The new definitions were added to provide guidance and clarification regarding program administration and procedures necessary for implementation of HB 2174.

A copy of the proposal was provided to industry stakeholders, including the Texas Food and Fuel Association. Mr. Scott Fisher, Senior Vice President of Policy and Public Affairs, submitted the following comments on behalf of the Texas Food & Fuel Association. While the Department appreciates Mr. Fisher's comments, and will take it under consideration, several of his comments were unrelated to the proposal and will not be specifically addressed in this adoption.

Mr. Fisher has pointed out that the addition of an "audit" definition in §12.1 creates a "more invasive program of oversight." The inclusion of an audit requirement, as indicated by the definition in §12.1, ensures accountability of licensed service companies, licensed service technicians and fuel facilities. Additionally, the Department's oversight of licensed service companies will ensure a higher level of transparency for Department and industry operations, enhance consumer protection, and, as a consequence, increase consumer confidence in the vehicle motor fuel industry.

Subchapter B, §12.13(c)(2) has been revised to eliminate a portion of the proposed language to clarify that only devices identified are subject to inspection.

In Mr. Fisher's submission, he inquired as to the provision of procedures to be set by the Department to ensure that industry members are follow the new rules, as required for compliance with HB 2174. The Department provides extensive compliance assistance following any rule change, and will do so here. TDA will provide technical assistance to industry as long as necessary, upon request, and the Department began outreach to facilities and licensed service companies prior to the proposal of the rules. TDA is confident that, with the assistance of stakeholders and TDA, fuel facilities, licensed service companies and technicians will develop a good understanding of the new rules.

SUBCHAPTER A. GENERAL PROVISIONS
4 TAC §12.1

The repeal is adopted under Agriculture Code, §13.021 which authorizes the Department to adopt rules related to administration of the weights and measures program.
The code affected by the adoption is Chapter 13 of the Texas Agriculture Code. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 3, 2018.
TRD-201800027
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: January 23, 2018
Proposal publication date: November 17, 2017
For further information, please call: (512) 463-4075

4 TAC §12.1

The adoption is made pursuant to Agriculture Code, §13.021 which authorizes the Department to adopt rules related to administration of the weights and measures program.

The code affected by the adoption is Chapter 13 of the Texas Agriculture 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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Proposal publication date: November 17, 2017
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SUBCHAPTER B. DEVICES

4 TAC §§12.11, 12.13, 12.15

The adoption is made pursuant to Agriculture Code, §13.021 which authorizes the Department to adopt rules related to administration of the weights and measures program.

The code affected by the adoption is Chapter 13 of the Texas Agriculture Code.


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Expiration of Registration. Registrations obtained under this section expire on the date printed on the certificate of registration. A registration that has been expired for less than one year may be renewed using the procedure provided in subsection (d) of this section. A registration that has been expired for one year or longer cannot be.

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renewed and a new registration must be obtained using the procedure provided in subsection (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Calibration required for device registration. Effective September 1, 2017, all motor fuel metering devices with a maximum flow rate of 20 gallons per minute or less and used for motor fuel sales must be calibrated by a Representative of the Department as follows:

(1) Device Registration Certificate Application: All applicants are required to submit and attach calibration documentation, conducted on behalf of the named applicant, on all motor fuel metering devices at the facility, to the device registration application submitted to the Department pursuant to §13.1015 and §13.1016 of the Code.

(2) Device Registration Certificate Renewal: Not later than the facility’s device registration certificate renewal date, on or after September 1, 2017, and at least every two years, thereafter from the previous calibration date, calibration documentation shall be submitted to the Department upon each annual renewal, pursuant to §13.1015 and §13.1016 of the Code.

§12.13. Devices Subject to Registration and Inspection; Exemptions.

(a) The following devices are subject to the registration requirements of §13.1011 of the Code; as authorized by §13.029 of the Code:

(1) motor fuel dispensers;
(2) kerosene dispensers;
(3) LPG meters; and
(4) scales.

(b) The following devices are subject to the inspection requirements of §13.101(a) of the Code, as authorized by §13.029 of the Code:

(1) motor fuel dispensers;
(2) kerosene dispensers;
(3) LPG meters; and
(4) scales other than hopper scales, except as provided by §12.14 of this chapter (related to Inspection and Testing Requirements for Hopper Scales).

(c) The following devices and motor fuel metering devices, are subject to the registration and inspection requirements of §§13.1015 - 13.1017 of the Code:

(1) all motor fuel metering device blends shall be inspected, tested, and calibrated by a Licensed Service Company at least once every two years; and

(2) only the motor fuel metering device and blends indicated in a complaint shall be inspected, tested and calibrated by a Licensed Service Company at a facility once the department has received three complaints at a facility within a twelve month period or a complaint is received on a facility that has not had a complete calibration of all meters and blends within the past 18 months.

(d) Pursuant to §13.029 of the Code, the following devices are exempt from registration and inspection requirements set forth in §§13.1001 and §13.1011 of the Code:

(1) pharmaceutical scales;
(2) postal scales;
(3) belt conveyor scales;
(4) rail scales; and
(5) immediate consumption food scales.

§12.15. Records.

(a) Records or other documents related to the inspection, testing and calibration of motor fuel metering devices must be maintained in accordance with Chapter 13 of the Code, and shall be submitted to the Department in the manner and time period as specified in a notice provided by a Representative of the Commissioner.

(b) All records related to the inspection, testing and calibration of motor fuel metering devices shall be maintained for a period of two years by the registrant and Licensed Service Company and are subject to inspection by the Department upon request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201800030
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §§8.1 - 8.7

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 8, 811 Project Rental Assistance Program Rule, §§8.1, Purpose; 8.4, Qualification Requirements for Existing Developments; 8.5, List of Qualified Existing Developments; and 8.6, Disposition of Conflicts with Other Department Rules, without changes to the text as published in the September 22, 2017, Texas Register (42 TexReg 4865). Sections 8.2, Definitions, 8.3, Participation as a Proposed Development, and 8.7, Program Regulations and Requirements, are adopted with changes to the proposed text and are published below.

REASONED JUSTIFICATION. The new 10 TAC Chapter 8, 811 Project Rental Assistance Program Rule, codifies procedures and evaluative criteria used in the Program, previously provided for in contracts and agreements, but not provided for in rule.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was from September 22, 2017, through October 23, 2017. Comments were accepted in writing and via email, with comments received from: (1) Kate Moore of Kate Moore Consulting, (2) Judy Telge of Coastal Bend Center for Independent Living, (3) Jean Langendorf of Disability Rights Texas, (4) Alyssa Carpenter, and (5) Walter Moreau of Foundation Communities.

§8.3(a)(2) Participation as a Proposed Development, Criteria.

COMMENT SUMMARY: Commenter 3 questioned whether or not the eligible Metropolitan Statistical Areas should be listed in the proposed rule because having them in rule makes them less flexible and more time consuming to change. The commenter feels the list should be flexible and responsive to changing needs such as natural disasters.
STAFF RESPONSE: The original seven Metropolitan Statistical Areas ("MSAs") were selected as part of a deliberative process involving many stakeholders. One additional MSA was added ahead of the 2016 Multifamily Cycle in response to public input from disability advocates, including the Disability Advisory Workgroup. The Department is working first to ensure that these MSAs are successful and the Target Population is well served in these areas. The Department would not make the decision to add more MSAs hastily and would want the public input associated with the rulemaking process to ensure the decision is well-considered. Staff recommends no changes to the rule.

§8.3(b)(3) Participation as a Proposed Development, Unit Eligibility.

COMMENT SUMMARY: Commenter 5 suggested that additional clarification be provided in regards to Units having a limitation for persons with disabilities. Specifically that having a preference for persons with disabilities or a restriction for special needs (which includes but is not limited to persons with disabilities), is not a limitation.

STAFF RESPONSE: Staff agrees that this is an important clarification and suggests the following rule change to the proposed rule.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

§8.3(c) Participation as a Proposed Development, Integration Requirement.

COMMENT SUMMARY: Commenter 5 pointed out that §1.15(c)(1) of the Department's Integrated Housing Rule seems to possibly conflict with §8.3(c) of this Rule, as the Integrated Housing Rule seems to indicate that the limit applies in combination with other special needs populations, while the 811 Rule indicates that it is specific to Persons with Disabilities.

STAFF RESPONSE: 10 TAC §1.15(c)(1) states that an entire Development cannot be 100% limited to persons with disabilities, or 100% limited to persons with disabilities in combination with other special needs populations. 10 TAC §1.15(c)(1)(A) and (B) go on to further provide maximum unit limitations that a Development may adopt for persons with disabilities. 10 TAC §8.3(c) incorporates this rule by reference. These sections of the rule and 10 TAC §8.3(b)(3), can be read without conflict, and thus staff recommend no changes to the rule.

§8.4. Qualification Requirements for Existing Developments, Proximity to Transportation.

COMMENT SUMMARY: Commenters 1 and 2 questioned why the proximity to public transportation is not a requirement for an existing development. Commenter 2 specifically noted this concern because individuals at 30% of area median income, and individuals relocating from institutions, more than likely do not own a car. Commenter 2 suggested adding "within proximity of transit" without a specific distance to at least encourage proximity instead of totally removing the requirement.

STAFF RESPONSE: Previously, the Section 811 Program Guidelines for Existing Developments, required that Existing Developments agree to provide at no cost to the tenant accessible transportation when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop; or that the Development be within a quarter mile of a bus or other public transit stop. Because of this language, there were several properties in the 2017 cycle that were excluded from the program that may have been properties a tenant would have chosen. Staff understands the importance of transportation, but does not agree that the rule should presume the households do not have cars or that another deciding factor may not have even more weight (e.g., proximity to family). From actual current 811 households served, staff has had units without transportation access declined by households, but then those same units without transportation subsequently leased by an 811 household. If no applicants choose to live at a property that does not have bus stop proximity, then there is no harm to the program. However, by including those properties, tenant choice is expanded. In keeping with the program goal of maximizing tenant choice, staff does not recommend putting this requirement back into the rule. As it relates to the suggestion to add "within proximity of transit" without a specific distance to at least encourage proximity, staff does not agree. Adding vague or undefined distances will only create confusion and make determination of whether a property satisfies that requirement untenable. Staff recommends no changes to the proposed rule.

§8.4. Qualification Requirements for Existing Developments and §8.5. List of Qualified Existing Developments, Lender or Investor Letters

COMMENT SUMMARY: Commenter 4 recommended that the rule require approval of the lender and syndicator on an existing development as a qualification requirement for the 811 Program. They suggested that a similar edit be made to §8.5 as well.

STAFF RESPONSE: The Commenter is alluding to language in the 2017 Chapter 10 rules. In the 2017, when participation in the 811 Program was a threshold requirement for 9% Developments and Developments receiving Direct Loan funds, and therefore inability to participate affected meeting threshold, language was included that exempted an applicant if they could submit documentation of their lender or syndicator being unwilling to approve 811 participation. However, staff sees this issue as a function of threshold versus points. Participation in the 811 Program is now proposed as a point/selection criteria and therefore such a letter would not preclude applying for credits or direct loan funds, but merely means the applicant cannot receive the points. In both the 2015 and 2016 HTC cycles, when 811 was a point item, such language was not included. 811 staff has worked with lenders and investors whenever needed to educate them about the Section 811 PRA Program and get them comfortable with how it will work with a Development. To date, over three years of tax credit and direct loan participation in the program, there have not been any lenders or investors that the Department has worked with that ultimately refused to participate in the Section 811 PRA Program. Staff recommends no changes to the proposed rule.

§8.7(c) Program Regulations and Requirements, Unit Types.

COMMENT SUMMARY: Commenter 5 suggests that once unit types are defined and entered into Exhibit 1 of the Rental Assistance Contract, the unit types should remain the same throughout the duration of the 20 year RAC unless mutually agreed upon to be revised.

STAFF RESPONSE: The Department retains the right to select the unit types and change the unit types throughout the duration of the RAC in order to maximize tenant choice. The unit makeup staff is striving for at a given property is based on the actual
demand for the development. For example, if a Development has 10 households interested in the Development and each of the 10 households are single-individuals, then the Department will ensure that Exhibit One of the Rental Assistance Contract is completed in such a way that these households can be served. The households on the waiting list for a property will change over time, which could necessitate a change to the unit types. The unit types will never be changed more than once per year, and will never exceed the maximum potential units designated in the Owner Participation Agreement. Staff recommends no changes to the proposed rule.

§8.7(h)(4) Rental Assistance Contracts, Unit Types.
COMMENT SUMMARY: Similar to the comment above, Commenter 5 suggests that the rule be revised to be clearer that the number of units in the RAC cannot be greater than the number indicated in the Participation Agreement.
STAFF RESPONSE: The Department agrees that the sentence noted may imply that the number could increase. Staff concurs with the change.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

§8.7(h)(8) Rental Assistance Contracts, Rent Increases.
COMMENT SUMMARY: Commenter 5 requests that 8.7(h)(8) be amended to provide more flexibility with when a development's rent limits and utility allowances can change because Multifamily Program rent limits change inconsistently.
STAFF RESPONSE: The Department has and is continuing to work with HUD to increase the flexibility of the program; however, this provision reflects federal program requirements. Staff recommends no change to the proposed rule.

§8.7(j)(2) Leasing Activities, Form of Lease.
COMMENT SUMMARY: Commenter 5 suggests that all Department-approved addendums should be made readily available for owners and the Department should delineate a clear process and timeline for Department review and approval of any other addendums already in use on other units in the property.
STAFF RESPONSE: The Department will strive towards reviewing addenda in a timely fashion. Staff commits to make addenda more readily available, but this does not require a rule change and staff recommends no change to the proposed rule.

§8.7(k)(3)(A) Rent.
COMMENT SUMMARY: Commenter 5 requests clarification that the enforced rent restriction be the maximum Department enforced rent restriction on the property (up to the 60% Area Median Income).
STAFF RESPONSE: Staff agrees with the comment regarding the maximum rents reflecting the maximum Department enforced rent at the Development. The rule has been changed to reflect that when the Development has a TDHCA enforced rent restriction that is equal to or lower than FMR that the initial rent limit is the maximum Department enforced rent restriction.

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent ("FMR"), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

§8.7(k)(3)(D) Rent Restrictions
COMMENT SUMMARY: Commenter 5 also requested that the rule be revised to allow rent increases annually without a deadline tied to the anniversary of the Renal Assistance Contract.
STAFF RESPONSE: Regarding the rent increases, the deadline being tied to the anniversary of the Rental Assistance Contract is required by HUD. No change to the proposed rule is recommended for this comment.

§8.7(l)(3) Program Regulations and Requirements.
COMMENT SUMMARY: Commenter 3 voiced concern that the Department being notified of a temporary vacancy of a participating Eligible Household, when that household is still current on rent, is intrusive, on its face discriminatory, and a potential Fair Housing violation.
STAFF RESPONSE: Staff understands the perception that may have been created by this provision and agrees in changing the proposed rule. The intention of the requirement was definitely not to discriminate or be intrusive, but to protect the household from eviction in the event that the eligible tenant was hospitalized or reinstitutionalized. However, given that there are other adequate tenant protections to prevent a tenant from being subject to wrongful eviction, and in light of the concerns expressed by the commenter, Disability Rights Texas, the Department will remove this provision.

§8.7(l)(6) Vacancy Payments.
COMMENT SUMMARY: Commenter 5 suggests that the Department replace the word "may" with "will" to provide Owners with assurances that vacancy payments will be made available during the applicable time period for participating units.
STAFF RESPONSE: The Department is committed to providing Owners with vacancy payments that meet the eligibility criteria, but cannot codify all scenarios where payments would not be made. Staff recommends no changes to the proposed rule.

§8.7(l)(8) Eviction
COMMENT SUMMARY: Commenter 5 suggests that the Department remove the tie between the Conflict Management process and eviction. Commenter suggests that if the Conflict Management process remains in the Department, the Department provide greater information on its website.
STAFF RESPONSE: Staff has modified this section to clarify exactly what the expectation is for Owner/Managers who are serving a Notice to Vacate or a Notice of Nonrenewal to the Tenant. The process has been separated from the Conflict Management process, however Owner/Managers will need to provide notice to the Department at least three calendar days before providing such notices. This can be done by emailing the 811 TDHCA Point of Contact.

(8) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

§8.7(n) Owner Training.
COMMENT SUMMARY: Commenter 5 urges the Department to offer in-person property management training on the Section 811 PRA Program. STAFF RESPONSE: The Department has provided extensive and frequent in-person property management training to participating Owners, compliance staff and property managers and is committed to continuing this practice. However, ultimately, it is the responsibility of a Development to ensure that their staff is implementing program regulations compliantly. Staff recommends no changes to the proposed rule.

§8.7(y)(3) Conflict Management.

COMMENT SUMMARY: Commenter 5 suggests that TDHCA remove the Conflict Management process tied to eviction. STAFF RESPONSE: The Department, in §8.7(l)(8) has removed the connection between Conflict Management and eviction. This section in (y) does not include that requirement. Staff recommends no changes to the proposed rule.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. The adopted new rules affect no other code, article or statute.

§8.2. Definitions.

Terms defined in this chapter apply to the 811 PRA Program administered by the Department. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning ascribed to them in or for the purposes of the Program Requirements.


2. Contract Rent--the total amount of rent specified in the Rental Assistance Contract (RAC) as payable to the Owner for the Assisted Unit.

3. Cooperative Agreement--the Section 811 Project Rental Assistance Program Cooperative Agreement including all exhibits and attachments thereto, by and between the Department as "Grantee" and HUD, entered into as a condition to and in consideration of TDHCA's participation in the Section 811 Program.

4. Eligible Applicant--an Extremely Low-Income Person with Disabilities, between the ages of 18 and 62, and Extremely Low Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of admission. The Person with a Disability must be eligible for community-based, long-term care services as provided through Medicaid waivers, Medicaid state plan options, comparable state funded services or other appropriate services related to the type of disability(ies) targeted under the Inter-Agency Partnership Agreement.

5. Eligible Families or Eligible Family--shall have the same meaning as Eligible Tenant.

6. Eligible Multifamily Property or Eligible Multifamily Properties--any new or existing property owned by a private or public nonprofit, or for-profit entity with at least five (5) housing units and as specifically identified in a Participation Agreement.

7. Eligible Tenant--an Eligible Applicant who is being referred to available Assisted Units in accordance with the Inter-Agency Partnership Agreement and for whom community-based, long-term care services are available at time of referral. Such services are voluntary; referral shall not be based on willingness to accept such services. Eligible Tenant also means an Extremely Low-Income Person with a Disability, between the ages of 18 and 62 at the time of referral, and Extremely Low-Income Families, which includes at least one Person with a Disability, who is between the ages of 18 and 62 at the time of referral. Also referred to as an Eligible Family.

8. Existing Development--for purposes of 811 PRA Program participation, a property within the Department's portfolio that is not actively applying for multifamily funds at the time, and is being considered to serve as the Eligible Multifamily Property as part of an Applicant's or an Affiliate's current application. For full applications made on or after January 1, 2018, Existing Developments do not include properties for which the only Ownership interest is through the participation of a Historically Underutilized Business, which owns less than 50% of an Existing Development.

9. Extremely Low-Income--a household whose annual income does not exceed thirty percent (30%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than thirty percent (30%) of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. HUD's income exclusions, as defined under 24 CFR §5.609 (as amended), apply in determining income eligibility and Eligible Tenant's rent.

10. HUD--the U. S. Department of Housing and Urban Development.

11. Inter-Agency Partnership Agreement--the Inter-Agency Partnership Agreement between TDHCA and State Health and Human Services Medicaid Agency(ies) that provides a formal structure for collaboration to participate in TDHCA's Section 811 Project Rental Assistance Program to develop permanent supportive housing for Extremely Low-Income Persons with Disabilities.

12. Multifamily Rules--Chapters 10, 11, and/or 13 of this Title, as applicable.

13. Owner--the entity that owns the Eligible Multifamily Property. Additionally, Owner means the entity named as such in the Property Agreement, its successors, and assigns.

14. Owner & Property Management Manual--a set of guidelines designed to be an implementation tool for the Program, which allows the Owner and the Owner's designated property manager to better administer the Program, which also includes adherence to the "Owner Occupancy Requirements" set forth in Section IV of HUD Notice H 2013-24.

15. Participation Agreement--that agreement to be executed by the Owner and the Department reflecting the agreement of participation in the Section 811 Project Rental Assistance Program with regards to a given number of assisted housing units on a certain multifamily rental housing properties.

16. Persons with Disability or Persons with Disabilities--shall have the same meaning as defined under 42 U.S.C. §8013(k)(2) and 24 CFR §891.305.

17. Program--TDHCA's Section 811 Project Rental Assistance Program under Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Investment Act of 2010 (Public Law 111-374) designed to provide permanent supportive housing for Extremely Low-Income persons with disabilities receiving long term supports and services in the community.
(18) Program Requirements—means but is not limited to: the Participation Agreement (sometimes called the Property Agreement); Tex. Gov't Code Ann. Chapter 2306; the applicable state program rules under Title 10, Parts 1, 2, and 8 of the Texas Administrative Code; the Owner & Property Management Manual; Part I of the Rental Assistance Contract attached as Exhibit 8 to the Cooperative Agreement; Part II of the Rental Assistance Contract attached as Exhibit 9 to the Cooperative Agreement; the Use Agreement; Program Guidelines attached as Exhibit 5 to the Cooperative Agreement; HUD Notice 2013-24 issued on August 23, 2013; Section 811 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. §8013(b)(3)(A)), as amended by the Frank Melville Supportive Housing Act of 2010 (Public Law 111-374; Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55); Notice of Funding Availability (NOFA) for Fiscal Year 2012 Section 811 Project Rental Assistance Program published on May 15, 2012; Notice of Funding Availability (NOFA) for Fiscal Years 2013 Section 811 Project Rental Assistance Program published on March 4, 2014, and Technical Corrections to NOFA; and all laws applicable to the Program.

(19) Proposed Development—the Development proposes to be awarded funds or an allocation as part of a Multifamily application.

(20) Rental Assistance Contract (RAC)—the HUD contract (form HUD-92235-PRA and form HUD-92237-PRA) by and between TDHCA and the Owner of the Eligible Multifamily Property which sets forth additional terms, conditions and duties of the Parties with respect to the Eligible Multifamily Property and the Assisted Units.

(21) Rental Assistance Payments—the payment made by TDHCA to Owner as provided in the Rental Assistance Contract. Where the Assisted Units are leased to an Eligible Tenant, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Eligible Tenant when the Utility Allowance is greater than the Total Tenant Payment. A vacancy payment may be made to the Owner when an Assisted Units is vacant, in accordance with the RAC and other Program Requirements.

(22) Target Population—the specific group or groups of Eligible Applicants and Eligible Tenants described in TDHCA's Inter-Agency Partnership Agreement who are intended to be solely served or to be prioritized under TDHCA's Program.

(23) Tenant Rent—the rent as defined in 24 CFR Part 5.

(24) Total Tenant Payment—the payment as defined in 24 CFR Part 5.

(25) Use Agreement—an agreement by and between TDHCA and Owner in the form prescribed by HUD under Exhibit 10 of the Cooperative Agreement (form HUD-92238-PRA) encumbering the Eligible Multifamily Property with restrictions and guidelines under the Program for operating Assisted Units during a thirty (30) year period, to be recorded in the official public property records in the county where the Eligible Multifamily Property is located.

§8.3. Participation as a Proposed Development.

(a) To the extent that Applications under Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed 62 or up age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title (such as housing for special needs) are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is:

(1) 25% for Housing Developments with less than 50 Units, and

(2) 18% for Housing Developments with 50 or more Units or for Elderly Limitation Developments.

(d) Section 811 PRA units must be dispersed throughout the Development.

§8.7. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once com-
mitted in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be “floating” (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

1. H 2012-06, Enterprise Income Verification (EIV) System;
2. H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;
3. H 2012-22, Further Encouragement for O/A to Adopt Optional Smoke-Free Housing Policies;
4. H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;
5. H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

1. Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

2. From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

3. TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

1. TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the Enterprise Income Verification (EIV) System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

2. Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

3. Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

4. Tenant Selection and Screening.

1. Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA’s Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA’s Program. The Target Population may be revised, with HUD approval.

2. Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property’s Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610 (as amended), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA’s Section 811 PRA Participant Selection Plan.

3. Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

   A. The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

   B. The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

   C. The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

   D. Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

4. Rental Assistance Contracts.

1. Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

2. Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

3. Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.
TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

5. If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

6. Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

7. Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

8. Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

9. Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

10. Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law.

11. Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property, to the extent allowed by law:
   (A) The RAC shall be transferred to new owner by contractual agreement or by the new owner’s consent to comply with the RAC, as applicable;
   (B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and
   (C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, as amended, regarding Ownership Transfer requests.
   (i) Advertising and Affirmative Marketing.
   (1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:
      (A) depictions of the units including floor plans;
      (B) brochures;
      (C) tenant selection criteria;
      (D) house rules;
      (E) number and size of available units;
      (F) number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);
      (G) documentation on access to transportation and commercial facilities; and
      (H) a description of onsite amenities.
   (2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.
   (3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.
   (j) Leasing Activities.
   (1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.
   (2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.
   (3) Communication. Owners are required to document all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.
   (4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.
   (k) Rent.
   (1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.
   (2) Rent Increase. Owner must provide the Eligible Tenant with at least thirty (30) days notice before increasing rent.
   (3) Rent Restrictions. Owner will comply with the following rent restrictions:
      (A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent ("FMR"), the initial rent is the maximum TDHCA enforced rent restriction at the Development.
      (B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.
      (C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with
other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property’s RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

1) Vacancy; Transfers; Eviction; Household Changes.

1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

3) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven (7) calendar days from when the Owner learns that an Assisted Unit will become available. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three (3) business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriate size Assisted Unit.

7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which is a uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189), as implemented by the U. S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) ("NEPA");


(F) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);
(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) ("CAA");
(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) ("Clean Water Act" or "CWA");
(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;
(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);
(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);
(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);
(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and
(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §4322 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials ("ASTM") 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes twelve (12) or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. Sec. 3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. 3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. 3141-3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated eleven (11) or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U. S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to ensure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.


(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing posters (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental advertising occur pursuant to 24 CFR §200.620(c). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(c)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy. 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 January 3, 2018.

TRD-201800008
TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.308

The Comptroller of Public Accounts adopts amendments to §3.308, concerning computers—hardware, software, services, and sales, with changes to the proposed text as published in the June 30, 2017, issue of the Texas Register (42 TexReg 3346). The comptroller amends this section to implement Senate Bill (SB) 755, 84th Legislature, 2015, which amended Tax Code, §151.006 (Sale for Resale). The bill created a resale exemption for computer programs sold by Internet hosting providers under certain circumstances. The comptroller also amends this section to formalize prior comptroller guidance, to address uncertainties in the application of the law, and to conform more closely to the applicable statutory language.

The following people submitted comments on the proposed amendment: Mr. Mark E. Nebergall, President of the Software Finance and Tax Executives Council; Ms. Eleanor Kim, Tax Counsel of DuCharme, McMillen & Associates, Inc.; and Mr. Garry Miles of Locke Lord, LLP. The comptroller agrees to make changes to the proposed language based on some of the comments received, including revising some proposed provisions and deleting others. The comptroller intends to work with industry to address the issues identified in the deleted provisions. The comptroller declines to make additional changes based on other comments at this time.

The comptroller amends the title of §3.308 to replace the term "software" with the term "computer program," which the statute defines and which the comptroller defines in this section.

The comptroller adds new subsection (a) to define terms. The amendment reletters subsequent subsections accordingly.

Subsection (a)(1) defines the term "computer program" based on its definition in Tax Code, §151.0031 (Computer Program). The comptroller deletes similar language in subsection (b)(1) of the current section. The amendment moves to relettered subsection (c)(1)(B) the statement in current subsection (b)(1) that a computer program includes any modification, installation, or maintenance charges made in connection with the sale of the program.

The comptroller received comments from Mr. Nebergall regarding proposed subsection (a)(2). Mr. Nebergall suggested that the maintenance of a computer program (specifically, technical support), which current subsection (b)(3) and proposed subsection (c)(2) address, is not one of the taxable services that Tax Code, §151.0101 (Taxable Services) enumerates. The comptroller notes that the repair, remodeling, maintenance, and restoration of tangible personal property is one of the enumerated taxable services in Tax Code, §151.0101. Tax Code, §151.0101(a)(5), with specific exceptions, taxes "the repair, remodeling, maintenance, and restoration of tangible personal property. . . ." Tax Code, §151.009 (Tangible Personal Property) defines "tangible personal property" and provides that the "term includes a computer program..." Consequently, the maintenance of a computer program is a taxable service, unless a specific exclusion applies. Tax Code, §151.0101(a)(5)(D) excludes such activities, but only when a person who has not sold the program performs them. The services are taxable when a person who sold the program performs them. The comptroller notes that this is evident because the exclusion in Tax Code, §151.0101(a)(5)(D) would otherwise have no meaning with respect to a computer program, which is tangible personal property and therefore subject to the provision of maintenance. A presumption exists that the legislature has not performed a useless act when enacting Tax Code, §151.0101(a)(5)(D). See Liberty Mut. Ins. Co. v. Garrison Contractors, Inc., 966 S.W.2d 482, 485 (Tex. 1998) ("The courts do not lightly presume that the legislature may have done a useless act.")

Furthermore, Tax Code, §151.0101(b) grants the comptroller "exclusive jurisdiction to interpret" the provisions of §151.0101(a)(5). Under that authority, the comptroller has long determined that "technical support" constitutes maintenance of a computer program. See current subsection (b)(3) of this section. Moreover, because the definition of maintenance has included technical support through many legislative sessions, the legislature has accepted the comptroller’s inclusion of it in his interpretation of the term with respect to computer programs. See Isbell v. Gulf Union Oil Co., 209 S.W.2d 762 (Tex. 1948) ("If the Legislature did not approve the construction which had been given the statute, it could have easily amended the law. This was not done.")

Ms. Kim also submitted comments on the proposed definition of "computer program maintenance" in subsection (a)(2). She cited to Verizon Business Network Services v. Combs, 2013 Tex. App. Lexis 4338 (Tex. App. -- Amarillo 2013, pet. dism'd). She referenced the portion of the decision in which the court stated that adding new functionality to a computer program is the creation of a new computer program, rather than the provision of a service, because modification of a program by the person who sold the program is the creation of a new program. She expressed concern that the comptroller’s Audit Division is not currently following the Verizon decision. She suggested that the comptroller should apply prospectively the holding of the court from the effective date of this section.

While the comptroller appreciates Ms. Kim’s comments, he declines to address audit procedures in this section. Also, the comptroller notes that, to the extent the Verizon decision construed existing statutory language, the application of that holding would not be limited to future periods.

In addition to providing comments regarding proposed subsection (a)(2), Ms. Kim also recommended that the comptroller expressly address the terms "repair" and "restoration" in this section.

The comptroller deletes proposed subsection (a)(2) defining the term "computer program maintenance" and declines to add def-
initions of "repair" and "restoration." However, the proposed language explaining that computer program maintenance includes error correction, technical fixes, and technical support now appears in subsection (c)(2) of this section. The Verizon decision expressly held, "[t]he definitions in section 3.292 apply when used in section 3.308, unless the context clearly indicates otherwise." Section 3.292 of this title currently defines the terms "maintenance," "repair" and "restore."

Ms. Kim also stated it would be helpful to articulate in this amendment that providing repair, maintenance, or restoration services on custom computer programs may qualify for the multistate benefit exemption under Tax Code, §151.330 (Intestate Shipments, Common Carriers, and Services Across State Lines).

The comptroller declines to address this issue in this section.

The comptroller adopts new subsection (a)(2) to define the term "contract programming." The comptroller proposed this definition as subsection (a)(3). The comptroller bases the new definition on subsection (b)(4) of this section, which the amendment deletes, and Tax Code, §151.0101(a)(5)(D), which provides that services to repair, maintain, create, or restore a computer program, including its development and modification, are not taxable unless the person repairing, maintaining, creating, or restoring the computer program also sold the computer program. Subsection (a)(2)(A) provides examples of contract programming. The comptroller adds the terms "repair" and "restoration" to the text of proposed subsection (a)(2)(A)(iii) to more closely align the language with Tax Code, §151.0101(a)(5)(D). The comptroller also makes nonsubstantive changes to the wording of proposed subsection (a)(2)(A)(iii) for clarity.

Subsection (a)(2)(B) memorializes previous comptroller guidance that contract programming only occurs when the person performing the service did not sell, and does not own, any intellectual property rights to the computer program created, repaired, maintained, or restored. See, for example, STAR Accession No. 200812241L (December 16, 2008) (explaining that "[c]ontract programming occurs when a computer program is created for a specific client and all and exclusive rights to the program are transferred, by contract, to the client").

Subsection (a)(2)(B) also distinguishes between the retention of intellectual property rights to the program itself and other intellectual property rights a contract programmer may retain that are merely incidental to the programming service, such as rights to materials, tools, methods, or processes used to perform the service. The retention of incidental rights does not make a contract programming service taxable.

The comptroller adopts new subsection (a)(3) to define the term "Internet hosting" based on Tax Code, §151.108(a) (Internet Hosting). The comptroller proposed this definition as subsection (a)(4).

The comptroller deletes current subsection (a)(6) and moves its content to new subsection (e)(1) to consolidate resale issues into one subsection.

The comptroller amends relettered subsection (b)(2) to replace a colon with a comma and to correct a cross-reference to §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

Relettered subsection (c) memorializes additional comptroller guidance regarding computer programs and related services. The comptroller deletes existing subsection (b)(1). The comptroller reorganizes information provided in current subsection (b)(2), addressing the taxability of computer programs, in new subsection (c)(1).

Subsection (c)(1)(A) states that a computer program is tangible personal property, and the sale, lease, or license of a computer program, whether in electronic form or on physical media, is taxable. See Tax Code, §§151.0031; 151.005 (Sale or Purchase); and 151.009. The comptroller has also revised the proposed language to replace the phrase "sales or use tax" with the term "tax" to make the section easier to read.

Mr. Nebergall commented that the use of a computer program license is the use of intangible property and not a use of tangible personal property, and thus the imposition of use tax does not apply to it.

The comptroller responds that the legislature has, under Tax Code, §151.009, deemed a computer program to be tangible personal property for sales and use tax purposes. In addition, the comptroller's longstanding position is that the license of a computer program is taxable. See current §3.308(b)(2) of this title, as well as Tax Code, §151.005(2) and Comptroller's Decision No. 36,237 (1998) ("Here, the transactions at issue involve the licensing of software programs (defined by statute and rule as the equivalent of leases or rentals of tangible personal property)." The comptroller has construed this consistently through many sessions of the legislature without a related amendment to the statute, and thus the legislature has accepted it. See Isbell, 209 S.W.2d at 762.

Subsection (c)(1)(B) explains that the sales price of a computer program includes charges for related items and services, such as installation charges. This is consistent with Tax Code, §151.007 (Sales Price or Receipts). The comptroller adds the terms "repair" and "restoration" to the text of proposed subsection (c)(1)(B) to more closely align the language with Tax Code, §151.0101(a)(5).

Subsection (c)(1)(C) clarifies current comptroller policy that a purchaser may not allocate the purchase price of a computer program sold or used in Texas between Texas and another state according to a use, or benefit derived, in another state. See, for example, Comptroller's Decision No. 44,280 (2005) (explaining that sales and use taxes are transaction taxes and there is no legal basis to apportion taxes based on subsequent use of an item of tangible personal property).

Mr. Nebergall and Mr. Miles each commented on whether the purchase price of a computer program, sold under a single license and installed on a server in Texas, should be apportionable to other states based on the use of the program in those other states.

Mr. Miles suggested that the realities of current technology mean that the treatment of the computer program as tangible personal property is no longer appropriate, because no one typically delivers it, for example, on physical disks and loads it onto servers. Rather, a person may deliver it electronically and subsequently access it (i.e., use it) in any location. Mr. Miles takes specific issue with the application of proposed subsection (c)(1)(C), which does not allow a person to allocate the sale or use of a single computer program license according to the percentage of use in Texas and elsewhere. Mr. Miles noted that a person may purchase and load a computer program elsewhere, perhaps in multiple states, before eventually bringing it into Texas for use, and that Texas then applies the use tax to the entire sales price of the
computer program, despite the fact that the purchaser has used it elsewhere prior to that point and may actually use it outside the state afterward. Mr. Miles understood that Texas allows credit toward the sales or use tax paid to another state, but believed that Texas should not impose the tax in full, regardless. Mr. Miles believes that treating a computer program used in many places contemporaneously as though the use occurred in only one location is contrary to the facts and leads to unfair results.

Mr. Miles proposed adding the following language to proposed subsection (c)(1)(C).

"However, the sales price of a computer program or a single license for a computer program that is used in Texas may be allocated to another state if the computer software is installed on hardware located in another state and the computer program is accessed by users outside Texas."

Mr. Miles also suggested that, for purposes of allocation under his proposed addition to proposed subsection (c)(1)(C), the comptroller should permit a purchaser to use "any reasonable method for allocation which is supported by business records."

In contrast, Mr. Nebergall agreed with the language the comptroller proposed in subsection (c)(1)(C).

The comptroller appreciates the difficulties created by changing technologies. He notes, however, that the legislature has deemed all computer programs to be tangible personal property, regardless of the specific attributes of any one program. Therefore, the comptroller declines to change the language of proposed subsection (c)(1)(C).

The comptroller proposed new subsection (c)(1)(D) to clarify that the use in Texas of a computer program licensed from an out-of-state vendor and residing only on an out-of-state server is taxable. This proposed guidance memorialized Comptroller's Decision 44,040 (2005) (explaining that "use of computer program in Texas may occur even though no physical media has entered into the state").

Mr. Nebergall, Ms. Kim, and Mr. Miles all took issue with proposed subsection (c)(1)(D) because they contend that a computer program must enter Texas in order to be subject to the Texas use tax. They suggested that, since a program must enter Texas, whether in electronic or physical form, to become subject to the use tax, simply accessing in Texas a computer program residing on a server outside the state is not sufficient to create a taxable moment for use tax.

The comptroller withdraws proposed subsection (c)(1)(D) for this amendment. The comptroller may address this issue in a future amendment, but intends to work with industry in order to address the comments raised.

In her comments, Ms. Kim proposed that the comptroller should address the issue of software-as-a-service in this amendment. The comptroller declines to address software-as-a-service at this time, but may address the issue in a future amendment.

New subsection (c)(2) addresses computer program repair, maintenance, and restoration. This subsection retains the substance of current subsection (b)(3), but clarifies that the repair, maintenance, or restoration of a computer program performed by the person who sold the computer program is taxable. The amendment adds to the proposed language the terms "repair" and "restoration." The amendment also incorporates language from proposed subsection (a)(2) explaining that repair, maintenance, and restoration include error correction, technical fixes, and technical support. In addition, the amendment adds a clarifying statement to memorialize longstanding comptroller policy that technical support may include remote assistance provided over the telephone or on-line. See, for example, Comptroller's Decision No. 32,349 (1995).

New subsection (c)(3) incorporates language from current subsection (b) providing that separately stated charges for instruction on the use of a computer program by the person who sold the computer program are not taxable. The comptroller amends the language to improve readability.

New subsection (c)(4) amends and restates language in current subsection (b)(4) providing that charges for contract programming are charges for the sale of a service and are not taxable. The comptroller amends relettered subsection (d) to correct typographical errors and to improve readability.

New subsection (e) implements SB 755. Subsection (e)(1) preserves the content of current subsection (a)(6) and adds the term "computer program" to indicate that resale provisions apply to computer programs and hardware since both are tangible personal property. Subsection (e)(2)(A) establishes a new qualification for resale purchases of computer programs by Internet hosting providers. Clauses (i)-(v) identify the requirements to qualify for the resale exemption.

Subsection (e)(2)(B) provides that, when an unrelated vendor recommends or requires routine maintenance, and the Internet hosting provider provides that maintenance, such maintenance does not invalidate the qualification for resale subparagraph (A) of that paragraph describes.

The comptroller corrects the language of proposed subsection (e)(2)(B) by replacing the term "Internet service provider" with the term "Internet hosting provider."

The comptroller adopts this amendment 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, as well as Tax Code, §151.0101(b), which provides the comptroller with exclusive jurisdiction to interpret Tax Code, §151.0101(a).

The amendment implements Tax Code, §§151.0031 (Computer Program); 151.005 (Sale or Purchase); 151.006 (Sale for Resale); 151.007 (Sales Price or Receipts); 151.009 (Tangible Personal Property); 151.010 (Tangible Items); 151.0101 (Tangible Services); and 151.108 (Internet Hosting).

§3.308. Computers--Hardware, Computer Programs, Services, and Sales.

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

(1) Computer program--A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media.

(2) Contract programming--Services to create or develop a new computer program, or to repair, maintain, modify, or restore an existing computer program, when the person performing the services did not sell, and retains no rights in, the computer program being created, developed, repaired, maintained, modified, or restored.
(A) Examples of contract programming include:

(i) writing a new computer program to perform a particular function for the customer where all rights in the program are transferred to the customer;

(ii) customizing a computer program owned by the customer or licensed to the customer by a third party; or

(iii) modifying a computer program or performing repair, maintenance, or restoration on a computer program that the programmer wrote for the customer under a prior contract programming agreement.

(B) Contract programming only occurs when the person performing the programming services transfers all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, to the computer program being created, developed, modified, maintained, repaired, or restored to the purchaser of the contract programming services. Notwithstanding other provisions of this paragraph, a person performing contract programming services may retain rights to property including materials, tools, methods, and processes used in the performance of the service. A person performing contract programming services may also retain rights to an incidental program or incidental component of a program included under an agreement to provide contract programming services. Examples of incidental programs and incidental components of a program are installers, drivers, macros, and subroutines.

(3) Internet hosting—Providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user’s own data or use software that is owned, licensed, or leased by the user or provider. The term does not include telecommunications services.

(b) Hardware.

(1) The sale, lease, or rental of computer hardware, including central processing units and all peripheral equipment, parts, and supplies, is subject to the sales and use tax.

(2) A taxable rental or lease can occur without the right to move the hardware if the lessee has total operational control of the hardware. For example, a lessee may contract to use a computer on the owner’s premises for an exact period of time weekly. The lessee provides the operator and all materials. During the time of use by the lessee, no one else may use the hardware. This transaction constitutes a transfer of the total operational control of the hardware, which is a lease or rental of tangible personal property. However, if the owner provides and directs the operator, operational control has not been transferred to the lessee. The transaction will not be considered the rental or lease of the hardware. Note: if the only supervision provided by the owner is for maintenance or training on proper use, this is not providing an operator. See §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) Sales tax is due on charges for labor or services rendered in installing or applying computer hardware.

(4) Sales tax is due on charges for labor or services rendered in remodeling, repairing, maintaining, or restoring computer hardware. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Installation charges for remote terminals are taxable whether or not separately stated. Charges for telephone lines are taxable.

(c) Computer programs and related services.

(1) Computer programs.

(A) The sale, lease, or license of a computer program is a sale of tangible personal property. Tax is due when the computer program, or a license to use the computer program, is transferred for consideration in Texas, or stored, used, or consumed in Texas, in electronic form or on physical media.

(B) Sales price. The sales price of a computer program includes all charges made in connection with the sale of the program, which may include charges for installation, modification, repair, maintenance, or restoration, whether or not separately stated.

(C) The sales price of a computer program, or a single license for a computer program, that is sold or used in Texas may not be allocated to other states based on the purchaser making copies of the program for use in another state; installing the program on hardware located in another state; or accessing the program in another state.

(2) Computer program repair, maintenance, and restoration. Charges for computer program repair, maintenance, or restoration by a person who sold the computer program are taxable. Computer program repair, maintenance, or restoration includes error correction, technical fixes, and technical support, whether provided over the Internet or over the phone.

(3) Instruction. Separately stated charges for instruction on the use of the computer program by a person who sold the computer program are not taxable.

(4) Contract programming services. Contract programming may result in the creation of tangible personal property, but it does not constitute the sale thereof. Charges for contract programming are charges for a service and are not taxable.

(d) Sales. The following are examples of transactions which involve the sale of taxable items and are taxable.

(1) A separate charge for additional copies of the result of services is taxable.

(2) The charge for processing, printing, or producing tangible personal property by a computer is taxable unless the processing, printing, or producing is performed as an incidental part of a nontaxable service. Examples of taxable processing, printing, or producing include standardized amortization or depreciation tables, newsletters, and advertising.

(e) Sales for resale.

(1) A resale certificate may be issued by a purchaser only if hardware or a computer program is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware or computer program while holding it for resale, the purchaser is liable for sales tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Internet hosting providers.

(A) A sale for resale includes the sale of a computer program to an Internet hosting provider in a transaction that meets all criteria in this subparagraph, regardless of whether care, custody, and control of the computer program is transferred to the user of the Internet hosting service.

(i) The Internet hosting provider acquires the program from an unrelated vendor for the purpose of selling the right to use the program to an unrelated user of the provider’s Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the program;
(ii) the Internet hosting provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(iii) the Internet hosting provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iv) the unrelated user purchases the right to use the computer program from the Internet hosting provider through the acquisition of a license; and

(v) the Internet hosting provider does not retain the right to use the computer program under that license.

(B) The performance by the Internet hosting provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of subparagraph (A) of this paragraph.

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 January 2, 2018.

TRD-201800004
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: January 22, 2018
Proposal publication date: June 30, 2017
For further information, please call: (512) 475-2220

♦    ♦    ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.5

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Tex. Admin. Code §651.5, without changes to the proposed text as published in the November 24, 2017, issue of the Texas Register (42 TexReg 6602), and will not be republished. The amendments add "footwear and tire tread comparison" and "analysis of nucleic acids other than human DNA" to the list of forensic disciplines and procedures subject to Commission accreditation requirements. The amendments are necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, §651.5 to reflect adoptions made by the Commission at its May 26, 2017 and November 3, 2017 quarterly meetings.

Summary of Comments. No comments were received regarding the amendments to this section.

The adoptions were made in accordance with the Commission's accreditation authority to subject or exempt from the crime laboratory accreditation process a type of analysis, examination, or test as described in Tex. Code. Crim. Proc. art. 38.01 §4(d)(b).

Cross reference to statute. The adoption affects 37 Tex. Admin. Code §651.5.

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 January 3, 2018.

TRD-201800021
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: January 23, 2018
Proposal publication date: November 24, 2017
For further information, please call: (512) 936-0661

♦    ♦    ♦    ♦
**Figure: 1 TAC §354.1707(c)**

<table>
<thead>
<tr>
<th>Performer Valuation Funding Distribution</th>
<th>DY7</th>
<th>DY8</th>
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<tr>
<td><strong>RHP Plan Update Submission</strong></td>
<td>20%</td>
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</tr>
<tr>
<td><strong>Category A - Required Reporting</strong></td>
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<tr>
<td><strong>Category B - MLIU PPP</strong></td>
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<tr>
<td><strong>Category C - Measure Bundles and Measures</strong></td>
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<td>75 or 85%</td>
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<tr>
<td><strong>Category D - Statewide Reporting Measure Bundle</strong></td>
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<td>15 or 5%</td>
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*If a performer’s [an] RHP meets its minimum private hospital valuation per DY for DY7-8, as described in subsection (d) [§354.1715(e)] of this section [division (relating to Category D Requirements for Performers)], the [each] performer [in the RHP] may allocate its DY7 and DY8 valuations in accordance with subsection (d) of this section [increase its Statewide Reporting Measure Bundle funding to 15% of its valuation].
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<tr>
<th>RHP</th>
<th>Private Hospital Valuation</th>
<th>Minimum Private Hospital Valuation per DY for DY7-8</th>
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<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>$12,933,175</td>
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<td>P4P Measure</td>
<td>P4P-Measure with an approved-delayed-baseline measurement period</td>
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<tr>
<td>DY7</td>
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<td>25% baseline reporting milestone</td>
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<tr>
<td></td>
<td>25% PY1 reporting milestone</td>
<td>25% PY2 reporting milestone</td>
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<tr>
<td></td>
<td>50% DY7 goal achievement milestone</td>
<td>50% DY7 goal achievement milestone</td>
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<tr>
<td>DY8</td>
<td>100% RY2 reporting milestone</td>
<td>25% PY2 reporting milestone</td>
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<tr>
<td></td>
<td>75% DY8 goal achievement milestone</td>
<td>75% DY8 goal achievement milestone</td>
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Figure: 1 TAC §354.1713(g)(3)

<table>
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<th>QISMC</th>
<th>DY7 Goal</th>
<th>DY8 Goal</th>
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<td>Baseline below MPL</td>
<td>Baseline between MPL and HPL The greater absolute value of improvement between: 10% gap closure towards HPL, or baseline plus (minus) 5% of the difference between the HPL and MPL, not to exceed the HPL</td>
<td>10% gap closure between the MPL and HPL The greater absolute value of improvement between: 20% gap closure towards HPL, or baseline plus (minus) 10% of the difference between the HPL and MPL, not to exceed the HPL</td>
</tr>
<tr>
<td>Baseline above HPL</td>
<td>The lesser absolute value of improvement of baseline plus (minus) 4% of the difference between the HPL and MPL or the IOS goal [HPL]</td>
<td>The lesser absolute value of improvement of baseline plus (minus) 8% of the difference between the HPL and MPL or the IOS goal [HPL]</td>
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<tr>
<td>IOS</td>
<td>5% gap closure</td>
<td>10% gap closure</td>
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</tbody>
</table>
Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas and the State of Texas v. Gulbrandsen Technologies, Inc., Cause No. 2016-80516; in the 270th Judicial District Court, Harris County, Texas.

Nature of suit and Defendant's operations: Defendant Gulbrandsen Technologies, Inc. ("Defendant") operates a chemical production facility in La Porte, Harris County. The facility manufactures chemicals used in the pharmaceutical, agricultural, cosmetic, and petrochemical industries. On April 12, 2014, Defendant spilled 400 gallons of a chemical solution containing aluminum chloride and hydrochloric acid on the ground, discharging a cloud of air contaminants. In addition, in November 2015, investigators with the Harris County Pollution Control Services Department ("HCPCSD") documented that Defendant discharged waste to the ground, which contaminated storm water runoff and impacted neighboring properties.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment and Permanent Injunction ("Judgment") requires Defendant to obtain a stormwater discharge permit for the facility, monitor and notify HCPCSD of all scheduled discharges of stormwater from the facility, and notify Harris County of any air release from the facility's lined reactors that has potential to cause a nuisance. The Judgment awards civil penalties against Defendant in the amount of $83,500, which will be divided equally between the State and Harris County; of this amount, $24,000 will be deferred upon the Defendant's full compliance with the injunction. The Judgment awards the State its reasonable attorney's fees in the amount of $5,000.

For a complete description of the proposed settlement, the complete Judgment should be reviewed. Requests for copies of the Judgment, and written comments on the proposed settlement, should be directed to David A. Terry, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548; phone (512) 463-2012; facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201800065
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: January 10, 2018

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period December 2017 is $38.69 per barrel for the three-month period beginning on September 1, 2017, and ending November 30, 2017. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of December 2017, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period December 2017 is $2.28 per mcf for the three-month period beginning on September 1, 2017, and ending November 30, 2017. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2017, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2017 is $57.95 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2017 from a qualified low-producing well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2017 is $2.78 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2017 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201800063
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: January 9, 2018

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 01/15/18 - 01/21/18 is 18% for Consumer/Agricultural/Commercial; credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/15/18 - 01/21/18 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-201800061
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 9, 2018

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 February 20, 2018. 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 February 20, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's 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: Alfonso Ramirez Gonzalez dba Ramdi Trucking; DOCKET NUMBER: 2016-1869-MSW-E; IDENTIFIER: RN109263343; LOCATION: Jonesboro, Hamilton County; TYPE OF FACILITY: tractor trailer; RULE VIOLATED: 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge and failing to begin reasonable response actions; PENALTY: $1,312; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Bell County Water Control and Improvement District Number 2; DOCKET NUMBER: 2017-1495-MWD-E; IDENTIFIER: RN101610491; LOCATION: Little River, Bell 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 WQ0011090001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $12,375; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Benjamin; DOCKET NUMBER: 2017-1089-PWS-E; IDENTIFIER: RN101390169; LOCATION: Benjamin, Knox County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to submit a Disinfectant Level Quarterly Operating Report; and 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $350; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Fort Worth; DOCKET NUMBER: 2017-1438-WS-E; IDENTIFIER: RN101424687; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water system; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of pollutants into or adjacent to any water in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-4935; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Vega; DOCKET NUMBER: 2017-1434-PWS-E; IDENTIFIER: RN101203628; LOCATION: Vega, Oldham County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017; monitoring period; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(a) and (f), by failing to collect lead and copper tap samples at the required 10 sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period, and failing to provide 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, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 10 sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: $472; ENFORCEMENT COORDINATOR: Paige Bond, (512) 239-2678; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Culebra Phillips Mart, Inc. dba Culebra Phillips 6; DOCKET NUMBER: 2017-1381-PST-E; IDENTIFIER: RN100712512; LOCATION: San Antonio, Bexar 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 tanks; PENALTY: $2,562; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Flowers Baking Company of Tyler, LLC; DOCKET NUMBER: 2017-1425-AIR-E; IDENTIFIER: RN100218221; LO-
CATION: Tyler, Smith County; TYPE OF FACILITY: bread and bun bakery; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Number 22041, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O2759, General Terms and Conditions (GTC) and Special Terms and Conditions Number 4, by failing to comply with the maximum allowable emissions rates; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O2759, GTC, by failing to report all instances of deviations; PENALTY: $23,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: GANESH FNY INCORPORATED dba Texas Pride N Joy; DOCKET NUMBER: 2017-1323-PST-E; IDENTIFIER: RN105668412; LOCATION: Petrolia, Clay 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; PENALTY: $3,504; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: GTF Energy, LLC dba The Railhead; DOCKET NUMBER: 2016-0626-PWS-E; IDENTIFIER: RN107228397; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(c)(1)(B)(iv) and (f)(7) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of ten gallons per unit; 30 TAC §290.45(f)(4) and THSC, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallon per minute per connection; 30 TAC §290.39(h)(2) and (3), by failing to notify the ED in writing before the start of construction and upon completion of the water works project and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the ED; and 30 TAC §290.39(m), by failing to provide written notification to the ED of the startup of a new public water supply system; PENALTY: $577; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2017-0736-AIR-E; IDENTIFIER: RN100229905; LOCATION: La Porte, Harris County; TYPE OF FACILITY: polyethylene plant; RULES VIOLATED: 30 TAC §101.20(1), 115.352(2), and 122.143(4), 40 Code of Federal Regulations §60.482-9(a), Federal Operating Permit Number O1439, Special Terms and Conditions Number 1.1, and Texas Health and Safety Code, §382.085(b), by failing to repair a leaking component by the end of the process unit shutdown; PENALTY: $45,000; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: IRA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1558-PWS-E; IDENTIFIER: RN101453991; LOCATION: Ira, Scurry County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (b), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017, monitoring period; 30 TAC §290.117(c)(2)(B), (h), 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, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples in the Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: NORTH VICTORIA UTILITIES, INCORPORATED; DOCKET NUMBER: 2017-1208-PWS-E; IDENTIFIER: RN102673324; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES 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 disinfectant residual using the prescribed format in 30 TAC §290.46(m); 30 TAC §290.47(c)(1), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(d)(2)(A) and §290.110(b)(2) and (4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine in the water entering the distribution system and throughout the distribution system at all times; and 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2017-1385-AIR-E; IDENTIFIER: RN106603970; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: natural gas liquids fractionation 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 O3781, General Terms and Conditions, by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: $2,888; ENFORCEMENT COORDINATOR: Robyn Babyk, 512-239-1853; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Raymond W. Blair, Jr. dba Last Resort Properties; DOCKET NUMBER: 2017-1133-PWS-E; IDENTIFIER: RN102689452; LOCATION: Lakewood Village, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (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) and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap 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 submit a Disinfectant Level Quarterly Operating Report to the ED each quarter.
by the tenth day of the month following the end of the quarter; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12503; PENALTY: $1,428; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Shredevi AA Corporation dba Lucky’s 7 Discount Store; DOCKET NUMBER: 2017-1322-PST-E; IDENTIFIER: RN102359403; LOCATION: Wichita Falls, Wichita 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: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: Stanley Haedge dba Kow Castle Dairy; DOCKET NUMBER: 2017-0925-AGR-E; IDENTIFIER: RN102869708; LOCATION: Hico, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a Concentrated Animal Feeding Operation (CAFO) through an individual water quality CAFO general permit; 30 TAC §321.40(k)(3) and §321.42(i)(5)(c), by failing to cease the application of wastewater to a land management unit (LMU) when extractable phosphorus levels were greater than 200 parts per million in zone 1 of an LMU and a Nutrient Utilization Plan had not been developed; and 30 TAC §321.47(f)(19)(B), by failing to maintain crops, vegetation, forage growth, or postharvest residues in the normal growing season, excluding the feed and water trough areas and designated open lots; PENALTY: $4,663; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: The Chemours Company FC, LLC; DOCKET NUMBER: 2017-0991-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1), Texas Rules and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1961, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 18, by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O1961, GTC and STC Number 18, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O1961, GTC, by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $17,889; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Twin Eagle Sand Logistics, LLC; DOCKET NUMBER: 2017-1519-MLM-E; IDENTIFIER: RN109684670; LOCATION: Laredo, Webb County; TYPE OF FACILITY: mineral processing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a source of air emissions; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge System General Permit Number TXR050000; PENALTY: $9,875; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(19) COMPANY: WEST AND WEST EXPRESS INCORPORATED dba SNS Express; DOCKET NUMBER: 2017-1445-PST-E; IDENTIFIER: RN102403292; LOCATION: Crockett, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30?TAC §334.72, by failing to report a suspected release of a regulated substance to the TCEQ within 24 hours of discovery; and 30?TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $7,000; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Yasin Mawani dba Dairy Way 3; DOCKET NUMBER: 2017-1240-PST-E; IDENTIFIER: RN102488590; LOCATION: Garland, Dallas 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 (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(2), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201800060
Charmaigne Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 9, 2018

Notice of Opportunity to Request a Public Meeting for Development Permit for Construction Over a Closed Municipal Solid Waste Landfill, Proposed Permit Number 62032

APPLICATION. RI Corpus Property, LP (13647 Montfort Drive, Dallas, Texas 75240) has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. CP-62032). The proposed development concerns a tract of land of approximately 2.44 acres located at 5214 Oakhurst Drive, Corpus Christi, Texas 78411, and consists of an enclosed four-story hotel, with a total footprint of about 75,573 square feet with associated driveways, parking areas, and supporting utilities. The development permit, if issued, will allow the applicant to build the above-mentioned building over the closed municipal solid waste landfill, and to operate it in accordance with the permit. A copy of the development permit application is available for public viewing at the Corpus Christi Public Library, 805 Comanche, Corpus Christi, Texas 78401 and may be viewed online at the following URL: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.716689&lng=-97.395555&zoom=13&type=r. For the exact location, please refer to the application.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below, within 30 days from the date of newspaper publication of this Notice.
A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 days prior to the meeting.

EXECUTIVE DIRECTOR ACTION. The Executive Director will issue his decision to either approve or deny the development permit application approximately 5 days following the public meeting or the ending of public comments period. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director’s decision. If an affected person wishes to appeal the Executive Director’s decision, they may do so by filing a written Petition for Review with the Chief Clerk of the Commission no later than 10 days after the date on which notice of the decision is mailed to the applicant and to each person who requested notification. Written Petition for Review should include: (1) your name, mailing address and daytime phone number; and (2) the permit number or other recognizable reference to this application.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency’s public record. Persons may contact the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en español, puede llamar al (800) 687-4040.

Information about the application may be obtained from RI Corpus Property, L.P., at the address stated above or by calling Mr. Jeff Arrington, Project Manager with SCS Engineers at (817) 358-6111.

TRD-201800075
Bridget Bohac
Chief C. Clerk
Texas Commission on Environmental Quality
Filed: January 10, 2018

Notice of Public Hearing
on Assessment of Administrative Penalties and Requiring Certain Actions of TOVA INC dba Petromart 115

SOAH Docket No. 582-18-1618
TCEQ Docket No. 2016-1695-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - February 8, 2018
William P. Clements Building
300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director’s First Amended Report and Petition mailed June 23, 2017, concerning assessing administrative penalties against and requiring certain actions of TOVA INC dba Petromart 115, for violations in Hardin County, Texas, of: 30 Tex. Admin. Code §334.6(b)(2)(C) and §334.50(d)(9)(A)(iii).

The hearing will allow TOVA INC dba Petromart 115, the Executive Director, and the Commission’s Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford TOVA INC dba Petromart 115, the Executive Director of the Commission, and the Commission’s Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of TOVA INC dba Petromart 115 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director’s First Amended Report and Petition, attached hereto and incorporated herein for all purposes. TOVA INC dba Petromart 115, the Executive Director of the Commission, and the Commission’s Public Interest Counsel are the only designated parties to this proceeding.


Further information regarding this hearing may be obtained by contacting Lena Roberts, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ’s Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §55.401(a), Notice of Hearing, “Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.”

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445 at least one week before the hearing.

Issued: January 8, 2018
Notice of Water Quality Application

The following notices were issued on January 2, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

CRYSTAL SPRINGS WATER CO., INC. has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014081001 to authorize the addition of an Interim II phase at a daily average flow not to exceed 365,000 gallons per day (gpd). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gpd. The facility is located at 19348 Amy Lane, in Montgomery County, Texas 77365.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Department of Family and Protective Services

Criminal History Requirements for Child Care Operations

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inequitable," the figure in "Criminal History Requirements for Child Care Operations" is not included in the print version of the Texas Register. The figure is available in the online version of the January 19, 2018, issue of the Texas Register.)

Child Care Licensing (CCL) staff are providing an opportunity for written public comment on the proposed three charts and the changes to those three charts listed in subsection (a) of 40 TAC §745.651 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?). The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. 40 TAC §745.651 states that the charts will be updated annually and published every January in the Texas Register as an "In Addition" document. The written public comment period will close on the 50th day following publication, which in this case is February 18, 2018. CCL will promptly consider any written comments received, provide a response to the commenter that will also be included on the Licensing public website, and in response to the comments CCL may implement changes to the charts, withdraw changes to the charts, or alter the charts based on a reasoned justification. If a change to a chart is made, CCL will subsequently re-publish the changed chart in the "In Addition" section of the Texas Register.

The changes proposed to the current charts include: (1) adding notation to the charts as a reminder that arrests or charges for an offense listed on the charts may affect a person's ability to be present, as noted in 40 TAC §745.701 (relating to May a person arrested or charged with a crime be present at an operation while children are in care?); (2) renumbering two offenses having Texas Penal Code (TPC) section number 21.16 as the duplicate section numbers were corrected during the 85th Regular Session; (3) adding new offenses that indicate risk that were added to the TPC during the 85th Regular Session; (4) identifying offenses that have been renamed or renumbered as a result of the 85th Regular Session; (5) reducing the period of time action is required for a Class A misdemeanor conviction for TPC 38.02 Failure to Identify based on the level of risk assessed with the offense; (6) expanding the amount of time action is required for a misdemeanor conviction for TPC 42.07 Harassment and adding notation that a conviction for this offense may result in a bar if the conviction is determined to have occurred as a result of violent action by an adult perpetrator against a child victim in accordance with federal regulation in 42 USC 9858E658H(c)(1)(E); and (7) adding TPC 46.08 Hoax Bombs due to the risk associated with the offense.

Written comments about these changes should be sent to the Centralized Background Check Unit (CBCU) division of CCL, P.O. Box 149030, Mail Code 121-7, Austin, Texas 78714-9030 and must be received by February 18, 2018. Written comments may also be sent by electronic mail to CBCUBackgroundChecks@hhsc.state.tx.us.

General Land Office

Notice of Request for Proposal for Financial Management/Internal Auditing Consulting Services

The Texas General Land Office ("GLO") invites consultants to submit proposals to provide consulting services to the GLO's Financial Management division.

The proposed project is to make recommendations to the GLO for efficiency, effectiveness, compliance, and best practices related to its Financial Management division's organization and processes. The consultant will develop findings, conclusions, and recommendations for management's consideration and decisions based on an operational review and improvement study of the GLO's Financial Management division.

The GLO intends to award a single contract for consulting services to review and make recommendations related to the GLO's transaction processing, accounting/reporting (i.e. general ledger activities, journal entries, account reconciliations, financial statements, account analysis, and account research), and budgeting (i.e. grant administration, appropriations, reporting, analysis, and monitoring).

Pursuant to Texas Government Code Chapter 2102 and related rules and the GLO's Internal Audit Charter, the GLO is seeking to contract for consulting services relating to Internal Audit to the GLO's Financial
Management division beginning February 1, 2018, through August 31, 2018.

Persons interested in a copy of the Request for Proposals No. X0013990-DF should contact Debby French, Procurement Division, Texas General Land Office at (800) 998-4456 or (512) 463-5309 or Debby.French@GLO.Texas.Gov to request a copy. The closing date for receipt of proposals is January 31, 2018. The GLO shall award any contract in accordance with the criteria and procedures set out in Request for Proposals No. X0013990-DF. The date of award is anticipated to be on or before February 19, 2018.

Further information may be obtained by contacting Kelly McBride, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 305-9108.

TRD-201800073
Mark A. Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 10, 2018

Office of the Governor
Notice of Funding Opportunities

The Homeland Security Grants Division (HSGD) is announcing the following grant funding opportunities for Fiscal Year 2019. Please access the Office of the Governor's eGrants system at https://eGrants.gov.texas.gov and click on CALENDAR to view the funding announcements and application due dates for all available grant programs:

2019 Local Border Security Program (LBSP)
2019 Border Prosecution Unit (BPU)

TRD-201800070
Aimee Snoddy
Executive Director
Office of the Governor
Filed: January 10, 2018

Grimes County
Request for Comments Regarding Additional Medicaid Beds in Grimes County

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Texas Health and Human Services Commission (HHSC) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of Grimes County is considering requesting that HHSC contract for more Medicaid nursing facility beds in Grimes County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Grimes County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for the Texas Health and Human Services Commission to contract for additional Medicaid beds in Grimes County should be presented to the Commissioners Court of Grimes County, Texas in a special session Wednesday, January 31, 2018, at 9:00 a.m. in the Grimes County Annex Building, 114 West Buffington Avenue, Anderson, Texas 77830.

TRD-201800058
Judge Joe Fauth III
County Judge
Grimes County
Filed: January 8, 2018

Texas Higher Education Coordinating Board
Request for Proposals - Financial Advisory Services for Student Loan Program

RFP Number 781-8-19618

The Texas Higher Education Coordinating Board (THECB) is seeking Request for Proposals from qualified respondents to establish a contract for Financial Advisory Services, in accordance with the requirements contained in this Request for Proposals (RFP). The Financial Advisory Services provide support for the student loan and related bond program.

Scope of Work:
The financial advisor shall be responsible for all duties and services necessary to facilitate the issuance of bonds and other debt obligations by the Board. The financial advisor shall be responsible for all required calculations including a calculation of arbitrage yield, arbitrage liability and yield restriction liability requirements not less than annually for each issue of outstanding obligations listed on Attachment F - Mandatory Price Sheet. Bonds issued subsequent to this RFP may require computations and related services during the term of any contract issued.

RFP documentation may be obtained by contacting:
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711-2788
(512) 427-6142
Theresa.lopez@thecb.state.tx.us

RFP documentation is also located on the THECB's website at:
And The Electronic state Business Daily
http://www.txsmartbuy.com/sp

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. CT on February 5, 2018.
TRD-201800039
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: January 5, 2018

Texas Department of Insurance, Division of Workers' Compensation

IN ADDITION January 19, 2018 43 TexReg 369
Proposed Fiscal Year 2018 Research Agenda

Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the commissioner of insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI). Labor Code §405.0025 requires the REG to conduct professional studies and research related to the delivery of benefits; litigation and controversy related to workers' compensation; insurance rates and rating methods; rehabilitation and re-employment of injured employees; the quality and cost of medical benefits; employer participation in the workers' compensation system; employment health and safety issues; and other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system. Insurance Code §1305.502 requires the REG to develop and issue an annual informational report card that identifies and compares, on an objective basis, the quality, costs, health care provider availability, and other analogous factors of the workers' compensation system of this state with each other and with medical care provided outside of networks.

Labor Code §405.0026 requires the REG to prepare and publish annually in the Texas Register a proposed workers' compensation research agenda for the commissioner's review and approval.

On January 9, 2017, the commissioner of insurance delegated the functions of the REG to the commissioner of workers' compensation.

In November 2017, the REG posted on the TDI website an informal request for stakeholders and the public to provide input on a suggested fiscal year 2018 research agenda. The REG also requested input from legislative offices. The REG uses the following criteria to evaluate responses:

1. Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

2. Will the results of the proposed research project address the informational needs of multiple stakeholder groups and legislative committees?

3. Is there available data to complete the project or can data be obtained easily and economically to complete the project?

4. Does the REG have the resources to complete the project during fiscal year 2018?

This year, the REG received no responses to its informal request for input. Based on the responses received and the criteria outlined above, the REG proposes the following research projects for the fiscal year 2018 research agenda:

1. Completion and publication of the twelfth edition of the Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a)-(d) and Labor Code §405.0025(b)).


3. An update of the 2016 biennial study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code §2053.012(a) and Labor Code §405.0025(a)(6)). The report is due on December 1, 2018.

4. An update of return-to-work outcomes for injured workers, including an examination of the impact of pharmaceutical utilization on return-to-work rates (required under Labor Code §405.0025(a)(4)).

5. An update of medical costs and utilization in the Texas workers' compensation system, to meet the requirements for the "Setting the Standard" biennial report.

6. A study of the patterns of re-injuries in the Texas workers' compensation system, to include an analysis of re-injury rates by injury types and industry sectors, as well as an analysis of pharmaceutical patterns (N-drugs, Opioids, pre and post formulary), medical costs, and medical utilization for employees with multiple injury dates as compared to employees with one injury.

7. A study of the outcomes impact of DWC's implementation of the Texas workers' compensation pharmacy closed formulary, to include functional outcomes, return to work rates, injured employee satisfaction, re-injury rates, and disputes.

The REG will consider expanding the scope of listed projects or conducting additional projects to accommodate stakeholder suggestions, subject to resource and data availability.

Request for Public Comment or Public Hearing

If you wish to comment on the proposed fiscal year 2018 research agenda or request a public hearing, you must do so in writing no later than 5:00 p.m. CST on Tuesday, February 20, 2018. A hearing request must be on a separate page from any written comments. The Texas Department of Insurance - Division of Workers' Compensation requires two copies of your comments or hearing request. Send one copy by mail to Maria Jimenez, Office of General Counsel MS-15, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645 or by email to rulecomments@tdi.texas.gov. Send the other copy by mail to D.C. Campbell, Director of the Workers' Compensation Research and Evaluation Group, Texas Department of Insurance, Mail Code 107-WC, P.O. Box 149104, Austin, Texas 78714-9104 or by email to wcsearch@tdi.texas.gov. If the commissioner holds a hearing, he will also consider written and oral comments presented at the hearing.

Please visit the TDI website at www.tdi.texas.gov for copies of the proposed research agenda. You may send any questions you have regarding the proposed agenda to D.C. Campbell at wcsearch@tdi.texas.gov.

TRD-201800068
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: January 10, 2018

Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation will hold a public hearing on Thursday, February 15, 2018, in the Tippy Foster Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. The hearing will also be audio streamed; to listen to the audio stream, access the DWC Calendar at www.tdi.texas.gov/wc/events/index.html.

The public hearing will begin at 10:00 a.m. and the division will receive comments on the following rules:

Amend: 28 TAC §134.530. Requirements for Use of the Closed Formulary for Claims Not Subject to Certified Networks.
Amend: 28 TAC §134.540. Requirements for Use of the Closed Formulary for Claims Subject to Certified Networks.

The proposed rule was published in the January 19, 2018, issue of the Texas Register. The comment period closes at 5:00 p.m. CST on February 20, 2018.

The division provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing, please contact Maria Jimenez at (512) 804-4703 at least two business days prior to the hearing date.

TRD-201800047
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Filed: January 8, 2018

Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held December 15, 2017, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003, Texas Register (28 TexReg 11018), to include the Dyslexia Therapists and Practitioners program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Dyslexia Therapists and Practitioners program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 451. The statutory changes were effective September 1, 2015; the adopted rules became effective October 1, 2016; and the Department commenced all regulatory functions for the Dyslexia Therapists and Practitioners program on October 3, 2016.

The Criminal Conviction Guidelines for the Dyslexia Therapists and Practitioners program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Dyslexia Therapists and Practitioners Advisory Board at its meeting on August 8, 2017, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for Dyslexia Therapists and Practitioners Program

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.
2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.
3. Persons who have a history of committing such crimes would pose a danger to the clients as well as their caregivers, family members, friends and others.
4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.
2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.
3. Persons who have a history of committing such crimes would pose a danger to the clients as well as their caregivers, family members, friends and others.
4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.
2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.
3. Licensees would have access to the property of clients, their caregivers, family, friends and others.
4. Persons who have a history of committing such crimes would pose a danger to the property of clients as well as their caregivers, family members, friends and others.
5. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices.

IN ADDITION January 19, 2018 43 TexReg 371
Reasons:
1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.

2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.

3. Licensees would have access to the property of clients as well as their care givers, family, friends and others.

4. Licensees are potentially involved in the billing of clients, filing of insurance claims and filing of government documents.

5. Persons who have a history of committing such crimes would pose a danger to the property of clients as well as their caregivers, family members, friends and others.

6. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

Reasons:
1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.

2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.

3. Persons who have a history of committing such crimes would pose a danger to the clients as well as their caregivers, family members, friends and others.

4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

Reasons:
1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings including, but not limited to, schools, homes, offices, hospitals and clinics.

2. Licensees are often with clients who are alone or in small groups. Additionally, licensees are often in the presence of caregivers, family members, friends and others.

3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their clients as well as caregivers, family members, friends and others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

TRD-201800026
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: January 3, 2018

Texas Lottery Commission

Scratch Ticket Game Number 2030 "Ultimate 7's"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2030 is "ULTIMATE 7's". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2030 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2030.

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, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 7 SYMBOL, 77 SYMBOL, BANK SYMBOL, COINS SYMBOL, GOLD SYMBOL, SAFE SYMBOL, $10.00, $20.00, $50.00, $70.00, $100, $150, $200, $500, $2,500, $10,000 and $4,777,000.

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:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
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</thead>
<tbody>
<tr>
<td>01</td>
<td>ONE</td>
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<tr>
<td>02</td>
<td>TWO</td>
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<td>ELV</td>
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<td>18</td>
<td>ETN</td>
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<td>19</td>
<td>NTN</td>
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<td>28</td>
<td>TWET</td>
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<td>29</td>
<td>TWINI</td>
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<td>40</td>
<td>FRTY</td>
</tr>
<tr>
<td>41</td>
<td>FRON</td>
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</tbody>
</table>
### 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. 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.

### G. Pack-Ticket Number
A 14 (fourteen) digit number consisting of the four (4) digit game number (2030), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers

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<table>
<thead>
<tr>
<th>Serial Number</th>
<th>Bar Code</th>
<th>Pack-Ticket Number</th>
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<tbody>
<tr>
<td>FRTO</td>
<td>WINX20</td>
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<tr>
<td>FRTH</td>
<td>WINALL</td>
<td></td>
</tr>
<tr>
<td>FRFR</td>
<td>BANK</td>
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<tr>
<td>FRFV</td>
<td>COINS</td>
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<td>FRSX</td>
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<td>FFR</td>
<td>10TH</td>
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<tr>
<td>FFR</td>
<td>TPPZ</td>
<td></td>
</tr>
</tbody>
</table>
start with 001 and end with 020 within each Pack. The format will be: 2030-0000001-001.

H. Pack - A Pack of the "ULTIMATE 7's" Scratch Ticket Game contains 020 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 020 while the other fold will show the back of Ticket 001 and front of 020.

I. 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ULTIMATE 7's" Scratch Ticket Game No. 2030.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "ULTIMATE 7's" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 79 (seventy-nine) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "7" Play Symbol, the player wins 20 TIMES the prize for that symbol. If the player reveals a "77" Play Symbol, the player wins ALL 35 PRIZES instantly! BONUS PLAY AREA: If a player reveals a prize amount, the player wins that amount instantly! No portion of the Display Printing or 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 79 (seventy-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 79 (seventy-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 79 (seventy-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 79 (seventy-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 (or another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to thirty-six (36) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have eight (8) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than five (5) times.
G. The "7" (WINX20) and "77" (WINALL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "7" (WINX20) and "77" (WINALL) Play Symbols will only appear as dictated by the prize structure.

I. On Tickets that contain the "77" (WINALL) Play Symbol, none of the WINNING NUMBERS Play Symbols will match any of the YOUR NUMBERS Play Symbols and the "7" (WINX20) Play Symbol will not appear.

J. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

L. The $10 and $20 Prize Symbols will only appear on winning Tickets in which they are part of a winning pattern.

2.3 Procedure for Claiming Prizes.

A. To claim an "ULTIMATE 7s" Scratch Ticket Game prize of $70.00, $100, $150, $200 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 $70.00, $100, $150, $200 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 an "ULTIMATE 7s" Scratch Ticket Game prize of $2,000 or $10,000, 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. To claim an "ULTIMATE 7s" Scratch Ticket Game top prize level prize of $4,777,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming an "ULTIMATE 7s" 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.

E. 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.

F. 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 "ULTIMATE 7s" 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 "ULTIMATE 7s" 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 flavors 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 3,600,000 Scratch Tickets in Scratch Ticket Game No. 2030. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2030 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
</tr>
</thead>
<tbody>
<tr>
<td>$70</td>
<td>540,000</td>
<td>6.67</td>
</tr>
<tr>
<td>$100</td>
<td>270,000</td>
<td>13.33</td>
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<tr>
<td>$150</td>
<td>90,000</td>
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<td>150</td>
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</tr>
<tr>
<td>$4,777,000</td>
<td>3</td>
<td>1,200,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.38. 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. 2030 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 Scratch Ticket 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. 2030, 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-201800064
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 10, 2018

Scratch Ticket Game Number 2041 "Aces and 8s"

1.0 Name and Style of Scratch Ticket Game.
A. The name of Scratch Ticket Game No. 2041 is "ACES AND 8s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.
A. Tickets for Scratch Ticket Game No. 2041 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2041.
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, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, ACE SYMBOL, 8 SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $30,000.
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. 2041 - 1.2D

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>ONE</td>
</tr>
<tr>
<td>02</td>
<td>TWO</td>
</tr>
<tr>
<td>03</td>
<td>THR</td>
</tr>
<tr>
<td>04</td>
<td>FOR</td>
</tr>
<tr>
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<td>FIV</td>
</tr>
<tr>
<td>06</td>
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</tr>
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<td>SVN</td>
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<td>09</td>
<td>NIN</td>
</tr>
<tr>
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<td>TEN</td>
</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
<tr>
<td>12</td>
<td>TLV</td>
</tr>
<tr>
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<td>14</td>
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</tr>
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<td>17</td>
<td>SVT</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
</tr>
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<td>TWY</td>
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<td>21</td>
<td>TWON</td>
</tr>
<tr>
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<td>TWTO</td>
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<td>TWTH</td>
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<td>TWFV</td>
</tr>
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<td>26</td>
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</tr>
<tr>
<td>27</td>
<td>TWSV</td>
</tr>
<tr>
<td>29</td>
<td>TWINI</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ACE SYMBOL</th>
<th>DBL</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 SYMBOL</td>
<td>WINX2</td>
</tr>
<tr>
<td>$2.00</td>
<td>TWO$</td>
</tr>
<tr>
<td>$4.00</td>
<td>FOR$</td>
</tr>
<tr>
<td>$5.00</td>
<td>FIV$</td>
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<tr>
<td>$10.00</td>
<td>TENS$</td>
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<td>TWY$</td>
</tr>
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<td>$50.00</td>
<td>FFTY$</td>
</tr>
<tr>
<td>$100</td>
<td>ONHN</td>
</tr>
<tr>
<td>$1,000</td>
<td>ONTH</td>
</tr>
<tr>
<td>$30,000</td>
<td>30TH</td>
</tr>
</tbody>
</table>
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. 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.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2041), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2041-00000001-001.

H. Pack - A Pack of "ACES AND 8s" Scratch Ticket Games contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

I. Non-Winning 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "ACES AND 8s" Scratch Ticket Game No. 2041.

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, Scratch Ticket Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "ACES AND 8s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 24 (twenty-four) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals an Ace "ACE" Play Symbol or an "8" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 24 (twenty-four) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.
A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have four (4) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "ACE" (DBL) and "8" (WINX2) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (e.g., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "ACES AND 8s" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 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 "ACES AND 8s" Scratch Ticket Game prize of $1,000 or $30,000, 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 "ACES AND 8s" 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 "ACES AND 8s" 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 "ACES AND 8s" 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.

**Figure 2: GAME NO. 2041 - 4.0**

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2</td>
<td>748,800</td>
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</tr>
<tr>
<td>$4</td>
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</tbody>
</table>

*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 4.41. 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. 2041 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 Game closing procedures and the Scratch Ticket 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. 2041, 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-201800067
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 10, 2018

North Central Texas Council of Governments

Request for Proposals for Regional Traffic Signal Retiming Program Phase V

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to implement a Regional Traffic Signal Retiming Program Phase V, which will include retiming of signalized intersections in the Dallas Fort-Worth Non-Attainment Area. The Regional Traffic Signal Retiming Program Phase V will include establishment of a baseline analysis, implementation of signal retiming, performing a subsequent analysis (improved conditions) and development of an executive summary of the program.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, February 16, 2018, to Gregory Masota, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The full RFP, including selection criteria and other desired elements, will be available at www.nctcog.org/rfp by the close of business on Friday, January 19, 2018.

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-201800074
Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 5, 2018, for a service provider certificate of operating authority in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of Lightower Fiber Networks II, LLC for a service Provider Certificate of Operating Authority, Docket Number 47930.

Applicant intends to provide facilities based, data, and resale telecommunication services in the exchanges of all incumbent local exchange companies throughout the state of Texas. More specifically, applicant intends to provide facilities-based SONET, private line, ethernet, wavelength, dedicated internet access and collocation services.

Persons wishing to 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 no later than January 26, 2018. 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 47930.

TRD-201800056
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2018

Notice of Application for Exempt Utility Registration

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 27, 2017, for exempt utility registration.

Docket Style and Number: Application of Bracero Water Supply Corporation for Exempt Utility Registration, Docket Number 47901.

The Application: Bracero Water Supply Corporation filed an application for exempt utility registration under Texas Water Code §13.242(c) and 16 Texas Administrative Code §24.103(e) in order to qualify it to assume ownership and operation of a portion of the Kamira Water System and customer base in Kerr County.

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. 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 47901.

TRD-201800044
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2018

Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas on December 27, 2017, of an application to amend water and sewer certificates of convenience and necessity and to decertify a portion of water service area in Harris County.

Docket Style and Number: Application of Quadvest, L.P. to Amend its Certificates of Convenience and Necessity and to Decertify a Portion of Aqua Texas, Inc.'s Water Service Area in Harris County, Docket Number 47910.

The Application: Quadvest L.P. filed an application to amend water certificate of convenience and necessity (CCN) No. 11612 and sewer CCN No. 20952 and to decertify a portion of Aqua Texas Inc.'s water service area in Harris County. The total area being requested includes approximately 93 acres and zero 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 47910.

TRD-201800032
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 4, 2018

Notice of Application to Amend Water Certificate of Convenience and Necessity and for Dual Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas on January 5, 2018, of an application to amend water certificate of convenience and necessity for dual certification in Hays and Travis Counties.

Docket Style and Number: Application of Sunfield Municipal Utility District No. 4 to Amend a Water Certificate of Convenience and Necessity for Dual Certification with Goforth Special Utility District in Hays and Travis Counties, Docket Number 47925.

The Application: Sunfield Municipal Utility District No. 4 filed an application to amend its water certificate of convenience and necessity (CCN) No. 13116 and for dual certification with Goforth Special Utility District in Hays and Travis Counties. The total area being requested includes approximately 2,136 acres and 960 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 47925.

TRD-201800040
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 5, 2018
Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director

Notice is hereby given to the public of the January 2, 2018, filing with the Public Utility Commission of Texas of a petition of the Electric Reliability Council of Texas, Inc. (ERCOT) for approval of the re-election of an unaffiliated director.

Docket Style and Number: Petition of the Electric Reliability Council of Texas, Inc. for Approval of Re-Election of Unaffiliated Director, Docket Number 47915.

The Petition: ERCOT filed a petition for approval of the re-election of Mr. Peter Cramton to a second three-year term as an Unaffiliated Director of the ERCOT Board of Directors (Board). ERCOT requests approval of the re-election of Mr. Cramton to serve on the ERCOT Board beginning August 17, 2018.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47915.

TRD-201800033
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 4, 2018

Notice of ERCOT's Filing for Approval of Unaffiliated Director

Notice is hereby given to the public of the January 2, 2018, filing with the Public Utility Commission of Texas of a petition of the Electric Reliability Council of Texas, Inc. (ERCOT) for approval of an unaffiliated director.

Docket Style and Number: Petition of the Electric Reliability Council of Texas, Inc. for Approval of Unaffiliated Director, Docket Number 47916.

The Petition: ERCOT filed a petition for approval of Mr. Terrence J. "Terry" Bulger as an Unaffiliated Director of the ERCOT Board of Directors (Board). Mr. Bulger has been approved as a director by the Corporate Members of ERCOT, and has met all requisite qualifications for service on the ERCOT Board. ERCOT requests approval of Mr. Bulger's serve on the ERCOT Board beginning approval by the Commission.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47916.

TRD-201800031
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 4, 2018

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Gainesville, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional 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 Gainesville; TxDOT CSJ No.: 1803GAINS.

The TxDOT Project Manager is Ryan Hindman, P.E.

Scope: Provide engineering and design services, including construction administration, to realign and rehabilitate Taxiway B.

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 for any contract entered into pursuant to this advertisement, 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 (DBE).

The DBE goal for the design phase of the current project is 0%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Gainesville Municipal Airport may include the following:

- Rehabilitate and mark Runway 18/36; rehabilitate and mark Runway 13-31; rehabilitate and mark full parallel taxiway; rehabilitate public apron; rehabilitate taxiways C, D, E, F and G; and construct new hangar access taxiway.

The City of Gainesville reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed 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/index.htm by selecting "Gainesville 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.

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, (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, or submits a cover page with the 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 February 12, 2018, 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 web form 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 (800) 68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201800042
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 5, 2018

Aviation Division - Request for Qualifications for Professional Services

The Texas Department of Transportation (TxDOT), acting as Agent for various general aviation airport Sponsors, intends to enter into an indefinite deliverable contract with a qualified prime provider pursuant to Texas Government Code, Chapter 2254, Subchapter A, and Title 43, Texas Administrative Code, §§9.30 - 9.42, to provide services as described below.

TxDOT Aviation Division will solicit and receive qualification statements for general engineering and design services, to include construction administration, at various general aviation airports located across Texas. The contract term will be three years, and will be renewable for up to two additional years. The contract term will begin on the date the contract is executed by Agent.

The complete RFQ can be found on the TxDOT Aviation web site: http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Sponsor: Various general aviation airports statewide in Texas

TxDOT Project Number: 4218AVNSAMC

TxDOT Project Manager: Eusebio Torres, P.E.

The Sponsor and TxDOT, 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 for any contract entered into pursuant to this advertisement, 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.

Presolicitation Meeting and Questions:

A presolicitation meeting is scheduled for January 24, 2018, at 10:00 a.m. in Room 107 of the Aviation Division office located at 150 E. Riverside Drive, South Tower, Austin, Texas 78704. All attendees must check in with the security agent on the east side of the building.

Effective from January 19, 2018, through the date of provider selection, if any staff member from a proposing firm contacts a TxDOT staff member, the firm will be disqualified.

Procedural and technical questions should be submitted in writing to beverly.longfellow@txdot.gov prior to the presolicitation meeting. Questions will be addressed at the presolicitation meeting and by published addenda to the RFQ. The last date to submit questions is January 30, 2018.

Project Description:

The professional services include all engineering and design services of General Aviation Airport Plans, Specifications and Estimate (PS&E) preparation and Construction Administration for a single bid, multi-site statewide airport maintenance contract(s) (SAMLc), consisting of maintenance contractors, general aviation pavement crack sealing, minor pavement repair, rehabilitation, and markings. Providers must propose and utilize a single professional engineer, licensed in Texas, who will perform the work. Will work require contact with a designated local representative at each airport site, a TxDOT project manager and an on-site resident project representative to be provided under separate contract. The contracted firm will be required to commence on-demand services within 72 hours of the Notice to Proceed for a work authorization.

Historically Underutilized Business (HUB)/Disadvantaged Business Enterprise (DBE):

For state-funded projects, subcontracting opportunities are not probable. Therefore, respondents are not required to provide an up-to-date HUB Subcontracting Plan (HSP) with their proposal at the time of submission.

For federally-funded projects, the assigned DBE goal for participation in the work to be performed under this contract will be race neutral. Services for DBE or HUB will be reported dependent upon the funding utilized for each project.

Proposal Procedure:
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, (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 only be altered to meet instructions in this solicitation. All printing must be in black on white paper, except for the optional illustration page. Only one person may be listed on pages 2-3 as the Aviation Project Design Team. Except for page 5, which should be left blank, 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 format consists of eight 8 1/2” x 11” pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11” x 17” and may be folded to an 8 1/2” x 11” size.

A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, submits more than one design team member on pages 2-3, or submits a cover letter, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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 that works best with Internet Explorer.

FIVE unfolded copies of the AVN-550 response must be received by TxDOT Aviation Division, Attn: Beverly Longfellow, at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than February 15, 2018, 4:00 p.m. (CST). Electronic facsimiles or forms sent by email will not be accepted.

Selection Criteria:
The selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the review of AVN-550s. The committee will review all AVN-550s and rate and rank each. All firms will be notified, and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

The Evaluation Criteria can be found in the Notice to Consultants located on the TxDOT Aviation web site: http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm .

TRD-201800062
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 9, 2018

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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.


**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 43 (2018) is cited as follows: 43 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 “43 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 43 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
2. Agriculture
3. Banking and Securities
4. Community Development
5. Cultural Resources
6. Economic Regulation
7. Education
8. Examining Boards
9. Health Services
10. Insurance
11. Environmental Quality
12. Natural Resources and Conservation
13. Public Finance
14. Public Safety and Corrections
15. Social Services and Assistance
16. 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)
SALES AND CUSTOMER SUPPORT

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